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the new economics
A. SELDON

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BARRY W. POULSON

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VITO TANZI

Contemporary Economics and Business Association
at George Mason University
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OUR CONTRIBUTORS IN THIS ISSUE

Barry W. Poulson – Visiting Professor of Economics, University of North Carolina, Durham, N.C.; **Miles P. DuVal Jr.**, – Captain, U.S. Navy (Retd.), The Cosmos Club, Washington, D.C.; **N. Nnadozie Nwosu** – Publications Editor, the Bureau of National Affairs, Washington, D.C.; **Vito Tanzi** – Doctor of Philosophy in Economics, Harvard University, currently Director of the Fiscal Affairs Department of the International Monetary Fund, Washington, D.C.; **Anthony Seldon** – Senior Research Associate, Institute of Economic Affairs, London, England.

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THE NEW ECONOMICS

By A. Seldon

The 'new' economics is fundamentally not new in methodology but in application and in terminology. All knowledge is derived from previous knowledge; if the development and advance in thinking is very large, it is excusable to describe the new knowledge as 'different' from the old, and therefore 'new.' The 'new' economics is essentially a rediscovery, refinement and development of British classical economic thinking and policy, in particular its core of markets and pricing systems. This is now called 'micro-economics.' And it was the dominance of economic thinking and policy by macro-economics, as developed not so much by Keynes as by the economists who for 30 years from 1936 to the 1960s claimed to be interpreting him, that provoked the micro-economic counterrevolution in economic analysis largely in the USA, although the counterrevolution in policy began in 1979 in Britain.

Governments inspired by the old economics, as in France and Greece, and more recently in Spain, will find they cannot apply its macro-policies except by massive coercion, alienation from the world economy, and shrivelling living standards.

I write as the Editorial Director for nearly 25 years to 1981 of the British Institute of Economic Affairs (IEA) which mobilized the counterrevolution in Britain, and since 1980 as Founder-Editor of *The Journal of Economic Affairs* which expounds the new economics and has an Academic Council of new economists, Max Hartwell, S.C. Littlechild, Patrick Minford, C.K. Rowley and B.S. Yamey. After a short youthful attraction to socialism, chance led me to the London School of Economics where from 1934 I was taught by Professor F.A. Hayek, born in Austria, but who carried the mantle of Austrian market-micro-economics, and who directly or indirectly is intellectually the most powerful inspirer of the new economics. I must add three other teachers who anticipated the counterrevolution: Professor L.C. Robbins, who brought Hayek to Britain, Arnold Plant, who although less known was a tower of strength in the intellectual advance of the market as a concept and a precept for policy, and Ronald H. Coase, who later emerged as a pioneer of the new economics at the University

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of Chicago but whose seminal analysis of the nature of the firm as a unit of non-market activity was written at the London School of Economics in 1936. After the war, further chance led to a partnership with Ralph Harris, a product of Cambridge. Together we built the IEA over 25 years as the world's largest generator of micro-economic analysis by 300 economists who, whether or not they realized it at the time, were taking part in the counterrevolution.

The Classic Foundation

The roots of the new economics lie in three streams of classical economics – market analysis, political economy, and the tradition, strong among the classical economists, of thinking and acting as social reformers.

First, the central emphasis of the new economics is on the power of *price,* or cost at the margin, to influence decisions on both supply and demand in what may seem the most unlikely of activities. This *methodology* is not new. Economists for over 200 years since David Hume and Adam Smith have known about markets and their unique power to create choice for demanders between alternative suppliers at the optimum rate of exchange at which both sides gain at a voluntarily bargained price. The 'marginal' notion, in distinction to the irrelevant (macro-economic) *average* or *total,* was evolved, miraculously almost simultaneously, in the early 1870s by three European economists: Stanley Jevons in England, Carl Menger in Austria and Léon Walras in France. Since then the importance of the market mechanism has been refined by the Austrian school of economists as a procedure of discovery by choosing and learning, by trial and error, between new alternatives made possible by technological innovation and social advance. These processes are today called 'market forces' which the ignorant foolishly used almost as a bogeyman term of abuse but which merely describe ordinary men and women reacting to changing opportunities in the everyday business of earning and choosing. In one of the most illuminating pieces of economic analysis ever written, an Austrian economist, Eugene von Böhm-Bawerk (Minister of Finance of Austro-Hungary in 1913) explained (in *Macht oder Ökonomisches Gesetz*) how market forces, or 'economic law' as he called them, would prevail over government, or 'power,' that tried to suppress them. The "Austrian

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school" has continued with Ludwig von Mises (1881-1973) and F.A. Hayek, and with Ludwig Lachmann, Israel Kirzner, Murray Rothbard, and a growing school of younger men in the USA and, more recently, in Britain.

Second, an emphasis of the new economics is on scepticism of the ability of government to know how, or to wish, to do public good. J.M. Buchanan and Gordon Tullock, main Founding Fathers of 'public choice' economics, have long demonstrated the unrealism of policies resting on the assumption that government comprises benevolent despots. For almost a century economists had earnestly worked on technical solutions to problems for implementation by government as though politicians and bureaucrats were neutral, disinterested servants of the public. The new economics of government, democracy, politics and bureaucracy has destroyed that illusion. But long before the era of 'neutral,' 'behaviorist' or 'positive' economics, the early classical economists were wise in the nature of man and the ways of the world and, in devising their remedies for social ills, made allowance for the short-sightedness, self-interestedness, incompetence, fallibility, corruption and venality of men (or women) with power. Hence the classical economists favored free trade between nations not only because it maximized the international division of labor but also because politicians would be restrained from abusing the power to levy tariffs. And they grasped the nettle of assistance to the poor by evolving the principle of 'less eligibility' by which people who shirked were less comfortable than those who worked. The neglect of that principle in the 20th century welfare state developed by welfare economists has produced widespread demoralisation, voluntary unemployment, tax evasion, growing disrespect for law, and contempt for democratic representative politics. At a seminar organized by the IEA in 1978, J.M. Buchanan said:

> "In one sense, public choice – the economic theory of politics – is not new at all. It represents rediscovery and elaboration of a part of the conventional wisdom of the 18th and 19th centuries, and notably the conventional wisdom that informed classical political economy. Adam Smith, David Hume, and the American Founding Fathers would have considered the central principles of public choice theory to be so elementary as scarcely to warrant attention. A mistrust of governmental processes, along with the implied necessity to impose severe constraints on

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> the exercise of governmental authority, was part and parcel of the philosophical heritage they all shared."

And he quoted John Stuart Mill in support.

Third, the new economics shows the way to effective reform. It fired the classical economists with the feeling that their ideas could contribute to public well-being, and they took their thinking to the public and its spokesmen in parliament. For half a century or more, economists have been content to speak to one another in the learned journals through abstract theorizing decked out in abstruse mathematics. The new economics, reinforced in Britain by belated cuts in government grants for fashionable but questionable subjects like sociology, has induced economists to resume the long-neglected task of justifying their comfortable lives at public expense by showing they could produce solutions for public problems. Again, the new economics is a long-delayed reassertion of the classical tradition and should now transform public policy in Europe.

The New Economics and Public Policy

The effect of the microeconomic counterrevolution on thinking in Britain was put in the January/February 1983 issue of the British journal, *New Socialist,* which woefully discussed the end of the

> "post-war consensus on the balance between public and private sectors, on the priority to be given to full employment, on universal welfare provision, on free state education, on trade union rights . . ."

The new economics is replacing the 'old' economics of Keynesian and etatisme in industry, welfare and local government.

The dominance of economics by macro-economics and the general neglect of micro-economics were widespread. In France, Henri Lepage, author of the admirable synthesis of the American streams in the new economics (*Demain le Capitalisme,* 1978), had studied economics but found the market meant nothing to him, and he first heard of the classical French economist Frederic Bastiat (1801-50) in 1976! In Britain, where a professor of economics confessed he had rarely mentioned entrepreneurship until recently, micro-economics was unfashionable for 20 years after the war, and still is in Cambridge, the home of Keynes, and other universities. No doubt in Spain students of economics for decades did not have their

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attention drawn to classical economics. It is not surprising the new economics developed strongly in the USA where the very size of the national economy has repeatedly demonstrated the massive benefits of liberal economic institutions in facilitating the exchange of goods, services and capital in a huge internal market. The Mont Pelerin Society, founded in 1947 by Hayek and a handful of economic liberals in Britian, the USA and mainland Europe, had few Frenchmen and no Spaniards until recently. It was left to a young French writer to introduce his countrymen to the new economics in 1978. In Britain the IEA began 20 years earlier, in 1957, to mobilize the new economists.

The importance of the new economics is that, in the words of the Englishman Bulwer-Lytton, "the pen is mightier than the sword." Keynes said ideas are mightier than vested interests. Ideas influence men with power more than they know. The 'practical man' who dismisses a hypothesis as 'mere theory' is himself reflecting ideas he absorbed as a young man. A member of a recent British Cabinet asked a group of economists at lunch, after explaining the policies he was trying to pursue, "Do you really think we have a good academic case?" Mitterrand, Papandreou, and Gonzales are the slaves of the old macroeconomics and its etatiste policies that have been tried for 35 years in collectivism, Keynesianism and corporativism but have repeatedly failed.

Until 1979 in Britain the Conservatives were content to manage socialism and largely ignored the battle of ideas. Mrs. Thatcher and her chief allies, Keith Joseph and Geoffrey Howe, are the first recent Conservatives to understand the power of ideas. And observers say they derived their intellectual inspiration and stimulus through the IEA. A more unexpected development is that the market is being understood by some leaders of the new British Social Democratic Party, who moreover go even further than the Conservatives on trade union and other reforms because they do not have a bad conscience about their wealth and do not fear alienating the working classes by liberalization of the economy. The most hopeful prospect for Britain, as perhaps for Spain and other countries in Europe, is the emergence of market-oriented coalitions alternating in government. Christian Democrats and other Conservative parties will not be able to ignore the truths of the new economics; and Social Democrats of various hues, who are generally more intellectually curious and excited by the battle of ideas,

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may take up the market with more enthusiasm once they understand its power to break down privilege and emancipate the masses. Soon a modern Ortega y Gasset may be writing of a new 'revolt of the masses' against over-government, bureaucracy and high taxation and in favor of private, family life as market forces accelerate the process of embourgeoisement.

Politicians and government that neglect the new economics will be left high and dry as the better macro-economists recognize that macro-economics is barren or dangerous if it neglects its micro-economic foundations in markets and market pricing. Professor Lawrence Klein, who won a Nobel Prize for his work in empirical macro-economics, has written a book to be published in May 1983 in which he argues for the reintegration of micro- and macro-economics. That is recognition of half of the truth: the whole truth is that micro-economics is more fundamental than macro-economics. Micro-economics may sometimes require to be complemented by macro-economics, because in some economic analysis the whole is more than, or different from, the sum of the parts; but without micro-economics, Keynesian macro-economics is a menace, as it has been in its teaching of full employment as the supreme aim of policy and the callous neglect of the consequence that it unleashed the power of politicians to unbalance budgets, borrow irresponsibly, and expand the money supply and so create inflation for which they would not suffer because they would have left office but from which many old people would suffer for the rest of their lives as their savings dwindled in real value. Such politicians led the 1970-74 British Conservative Government of Edward Heath. Not least, among its intellectual victories, the new economics, especially public choice theory, has shown macro-economics to be not only intellectually erroneous but politically unrealistic and naive.

So much for the origins and importance of the new economics.

The Main Components of the New Economics

I have classified the elements of the new economics into ten groups.

1. The Triumph of Micro-Economics

The most fundamental element is the reaction against 30 or

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40 years of the dominance of macro-economics, the re-assertion of micro-economics, and the demonstration that it is the more seminal of the two. The supremacy of micro-economics is illustrated in the world's best text book for students, *University Economics,* the SA authors of which, Armen Alchian and William Allen, were never seduced by macro-economics. Unlike other text books which reflected the passing fashion for macro-economics dominance, it shows that macro-economic concepts like growth, unemployment, inflation are best explained by micro- economic analysis. It is a tribute to the German 'social market' economists, Eucken, Erhard, Müller-Armack and others, that they rejected or even ignored Keynesian macro-economics.

Macro-economics has separated into two main 'schools': the non-Ricardians (after David Ricardo, 1772-1823) led in Cambridge, England, by Jana Robinson, Piero Sraffa, and Nicholas Kaldor, and the neo-classicals led by Paul Samuelson and Robert Solow of Harvard in Cambridge, Massachusetts, USA. The Cambridge, USA, macro-economists claim they have inherited the micro-economic approach of the neo-classical Frenchman Leon Walras (1843-1910) and the Italian Vilfredo Pareto (1843-1923), but their thinking is defective because they also have not fully incorporated neo-classical micro-economics. The counterattack on the macro-economists of both schools has been spear-headed by the arch-exponents of micro-economics, the Austrian school, as demonstrated in a paper by L.M. Lachmann published in 1973 by the IEA.

Macro-economic analysis of (national) income, output, expenditure, investment, growth can be safely used only by micro-economists! Only they are constantly sensitive to the substructure of individual decisions (personal, family, households, firms, small groups) in buying and selling, borrowing and lending, saving and investment (and giving or taking). Macro-economics is not safe in the hands of macro-economists who think it replaces the substructure of individual decisions, or that it is enough to assume that individuals act in a way that conforms to the macro-economic laws, rules, tendencies or generalizations that apply to the behavior of large groups like a country or society as a whole.

Such macro-economists had produced fearful conclusions for four major policies: 'income policy' to control inflation, the management of economic growth, the means to ensure technological progress, and monetary policy for an open society.

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'Incomes policies' in Europe that have controlled wages, salaries and other payments for labor have done extensive damage to democratic societies because they are based on the characteristic error of macro-economics that it emphasizes the *income* effect and ignores the *price* (rationing, efficiency) effect of wages in redistribution labor. Incomes policies put the price mechanism out of action and deprive the market of its main function. Moreover they gradually spread to the control of more and more incomes and prices and in the end lead to the central direction of all economic activity.

Second, macro-economics has produced 'growth targets' and projected growth rates of GNP, such as in the short-lived British 'National Plan,' that are meaningless, since growth is the cumulative outcome of the micro-economic decisions and behavior of individuals. Growth 'targets' cannot be the aim of economic policy; they are instead a distraction from the task of facilitating entrepreneurial alertness to new opportunities for investment to satisfy unsatisfied demand that another originally British economist in the Austrian tradition, Israel Kirzner of New York University, has demonstrated to be the prime mover of progress. Economic growth in France has taken place not because of 'indicative planning' but in spite of it.

Third, macro-economics confuses the technical and the economic, as in accelerating the scrapping of old equipment. Technical change does not necessarily bring economic progress. When new techniques for new products are introduced, only the market can reveal whether they will be demanded and profitable, for how long, and how soon superior versions will be installed by other firms. Only the market, with its pricing mechanism reflecting individual (or small group) decisions, can tell us, by the process of trial and error, by learning from doing, whether *change* is *progress.* The notion of Nicholas Kaldor that industrial managers should be incited by a tax on old equipment to search for technical improvements is a characteristic, far-reaching error arising from macro-economic thinking.

Fourth, macro-economic policies, as in the Irish saying, are impartial between right and wrong. 'Reflation' has, in the short run at least, the same effect of boosting output in all industries: efficient and inefficient, new and old, growing and declining, capable or incapable of being self-financing and profitable. All macro-economic policies tend to be inefficient, clumsy, wasteful and damaging. Similarly, as Kayek has repeatedly empha-

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sized, what is important for growth and efficiency, and for employment and inflation, is not the total, or average, or absolute size of wages and other pay but wages in individual industries, occupations and even single firms and jobs relative to pay in other industries, occupations, firms and jobs. But the neo-Ricardian macro-economists are not interested in *relative* wages or other prices. They are therefore not equipped to deal with the *divergent* expectations which (as Keynes, whose name and prestige they exploit, emphasized) are the basis of decisions on investment.

In all these ways the new economics has mounted a complete counterattack on the prevailing, contemporary, conventional macro-economics which neglectes the underlying jig-saw puzzle of supply and demand, activities and expectations characterized by one of the new economists, British professor G.L.S. Shackle, as able to change

> "as swiftly, as completely, and on as slight a provocation as the losse, ephemeral mosaic of the kaleidoscope. A twist of the hand, a piece of 'news,' can shatter one picture and replace it with a different one."

After all this, Lawrence Klein's forthcoming book is not surprising, but belated.

2. *The New Interpretation of Capitalist History*

A counterrevolution in the economic reading of history has restored, refined and reinforced the classical interpretation of capitalism as the source of increased productivity and rising living standards.

For long many British historians and economists, G.R. Porter, T.B. Macauley, famous for his Whig interpretation of history, John Stuart Mill, J.E. Cairnes, Alfred Marshall, Herbert Butterfield taught that the Industrial Revolution had improved the condition of the mass of the people from the late 18th century. For a century, beginning with Arnold Toynbee in 1884, a string of 'liberal' and socialist historians – the Webbs, the Hammonds, the Coles (three man and wife teams – is that a clue?) and more recently the Marxists, E.J. Hobsbawm and E.P. Thompson, have taught almost the opposite – that the condition of the people had worsened contrasted with the 'quality of life' in 18th century 'Merrie England' and that capitalism had produced 'immiseration.'

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The counterrevolution, which is restoring the classical view, is largely the work of economists or historians trained in economics who are examining the evidence more closely than did the 'immiseration' (Karl Marx's word) school. In Britain, the original counterrevolutionaries in the 1920s and 1930s were John Clapham, Dorothy George, Dorothy Marshall, and Ivy Pinchbeck. Aspects of the immiserationist interpretation were challenged later by two British scholars, the economist W.H. Hutt and the historian T.S. Ashton. In recent years their work has been reinforced by British economist-historians, of whom the most combative is R.M. Hartwell, an Australian. Even the neo-classical macro-economist John Hicks has recognized that "without the increase in productive power due to industrialization, the rise in real wages could not possibly have occurred."

In 1954 Hayek and Hutt had collaborated with the Frenchman Bertrand de Jouvenal and the American L.M. Hacker in emphasizing and amplifying the Clapham interpretation. They maintained that the immiseration theory had been inspired more by ideological and philosophical attitudes than by rigorous scrutiny of the evidence. Hayek's power of insight saw they were guilty of a simple intellectual error: the poor 'proletariat' were not existing people immiserated by early capitalism but a *new* population that would not otherwise have come into being but for the new industrial capitalism that had created new livelihoods by developing new tools and equipment to increase their productivity.

The difference between the two approaches was that the immiserationists were historicists who were apt to mistake a subsequence for a consequence, to argue, *post hoc ergo propter hoc,* that if poverty followed (or rather, was visible after) capitalism, capitalism was the cause of poverty. The counterrevolutionaries, or "Whigs,' being economists as well as historians, were analysts who asked what *would have happened* in the absence of capitalism, or the industrialization and urbanization that it brought. Their answer was that pre-capitalist poverty would have continued and the improvement in living standards *would not have taken place.* Like the Keynesians who forget Keynes, the Marxists forget Marx, who had emphasized the prodigious productivity of capitalism.

But the Marxist misinterpretation of history continues to be taught and to influence thinking and policy. So in 1971, prompted by a young English economist who had found that

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the description given by 19th century novelists of 'the condition of England' was still being regarded as true even where it conflicted with the findings of the counterrevolutionaries, I assembled nine economist/historians to present the new evidence in an attempt to correct the immiserationist interpretation in text books for schools and universities. R.M. Hartwell challenged the view that poverty had been created by industrialization. G.E. Mingay maintained that industrialization in agriculture had made for improvement. Norman McCord showed that private relief of poverty was 'more alive and enterprising than the official poor law.' (Beveridge, the architect of the post-war welfare state, did not, again unlike many of his followers, overlook the importance of voluntary action.) Private philanthropist were enabled to help the poor because of the very wealth created by capitalism. Rhodes Boyson (now Minister for Education) argued that the Lancashire cotton worker had gained from the Industrial Revolution, and that, if it had been controlled or planned by the state, the release of human energies and the rise in living standards would not have taken place. (Another example of the better insights from the analytical than from the historical approach.) G.C. Hanson, another economist, demonstrated that there was considerable spontaneous development of welfare by insurance and other mutual or commercial institutions before the welfare state. W.H. Chaloner and W.O. Henderson charged that Engel's evidence on 'the hungry 1840s' was selected to support his political convictions. And Michael Jefferson, who had prompted the book, revealed the biased and fictional descriptions in the novels of Charles Dickens, Benjamin Disraeli, Charles Kingsley, and others still today regarded as faithful accounts of 19th century capitalist England.

An early reinterpreter of history was E.G. West, whom I had to persuade in 1963 to assemble in book form material he had been gathering on the early history of education in Britain. The dominant, conventional naivete had been that education was rudimentary in the 19th century until the state began to foster local government schools in 1870, with the implication that it would have remained so if left to private, family initiative. From the neglected evidence in official enquiries, from other sources, and from *a priori* economic analysis Professor West destroyed the conventional naivete, once and for all, in *Education and the State,* which despite early scepticism from conven-

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tional historians soon became a classic.

Over the last 15 years or so, American economists had similarly reinterpreted USA history. Some have quantified their findings, but their method has, like the British, been essentially analytical rather than 'historical.' In studies of the railways, industrial concentration, slavery, anti-trust laws, the oil companies, cartels, the trade cycle, the Great Depression of 1929-31, and other subjects they have rebutted the conventional anti-capitalist view of American historians and of superficial economists like J.K. Galbraith and shown that state intervention invariably prevented the working of competitive markets from removing the excesses of industrialization.

The new economists have thus largely repulsed the false history of the conventional anti-liberal anti-capitalist historians who have dominated the teaching of economic history for a century.

3. The Theory of Political ('Public') Choice

In view of the increasing role of political authorities – government and bureaucracies – in the production and allocation of resources in North America and Europe, it was inevitable that before long economists, who for 200 years had dissected the conduct of industry and market 'failure,' would turn to the political 'market' and government 'failure.'

Although it originated in British classical economics, two American economists, J.M. Buchanan and Gordon Tullock (both of obvious Scottish ancestry and therefore distinctly akin to David Hume and Adam Smith), must be acclaimed as the Founding Fathers of what they described as 'public choice theory.' Their compatriot, Abraham Lincoln, would not now (another example of analytical rather than 'historical' history) regard present day government in the USA (or Britain or Spain or any other 'representative' democracy) as being "of the people, by the people, for the people." 'Public choice' is not that of the public, or people at large, but of their supposed political representatives in government, which in day-to-day reality means politicians and bureaucrats and their creations – from the Tennessee Valley Authority in the USA to the quangos in Britain (*q*uasi-*a*utonomous *n*on-*g*overnment *o*rganizations). In short, government in present day representative democracy does not faithfully reflect 'public choice.' There is no 'social welfare

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function' to tell government how to allocate resources to reflect public choice even if government so wished, which it cannot be assumed to do. Government in real life is a distorting mirror of 'public choice.' Indeed, a recent recruit to the new economists, James Bennett of the George Mason University, USA, is now arguing that government actively *avoids* public choice and 'goes underground' by taking some of its activities out of the budget. In England, I therefore prefer the terms 'the economics of politics' or '*political* choice.'

This branch of economics was founded in the USA in the middle 1950s. By the mid-1970s it was still little known in England. So in 1975 I invited Gordon Tullock to write *The Vote Motive* as an introduction, and, in 1978, Buchanan to open a seminar with a key-note address, followed by C.K. Rowley, Jack Wiseman and A.T. Peacock, Albert Breton from Canada and Bruno Frey from Switzerland. Earlier, in 1973, W.A. Niskanen had refined his economics of bureaucracy. And in 1978 S.C. Littlechild used 'Austrian' and political choice analysis to demolish the appealing but fallacious argument for a 'mixed' economy, which promises the best combination of state and market but ends with the worst.

Britain has, like a conservative country, retained longer than some other countries the romantic notion that government comprises benevolent despots whose essential purpose is to do good. No doubt Spain – and France and other countries in Europe – are also among the romantics. They also believe that government is equipped to achieve its well intentioned objectives. Keynes, Galbraith and a host of economists in Europe, including Spain, and every other continent (including, of course, Russia) continued with a stream of advice as if they were addressing philanthopic autocrats who stood at their beck and call. The political scientists are probably even worse than the economists in their naivete, or perhaps wishful thinking.

Individuals embody and express sets of preferences which normally vary widely. Even if incomes were equal, they could be spent very differently (unless government prevents it). The money raised in taxes is spent by government. In smaller, local, perhaps voluntary activities, people may agree to establish common bodies to decide joint expenditure. One of the very early Founding Fathers of 'public choice,' the British economist Duncan Black, in 1958 studied the machinery of committees

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that govern (act as 'governments') such collective activities.

And here is the first obstruction to the exercise of real public choice. There may be no motion or proposal or even candidate that will defeat all others in a majority vote. The collective outcome will depend on a relatively arbitrary or accidental event – simply the point at which the voting stops! And this, in turn, depends on even more arbitrary occurrences that have nothing to do with 'public choice' – the manipulation of the agenda and of the rules of order. And, of course, *the power to manipulate is not evenly shared by the public*. So much for the great 'democratic' god of the supremacy of the majority.

The notion that it might be possible to construct a 'social welfare function' that assembles and assimilates public choices so that government knows where to allocate resources – for a time a hope among social welfare planners – was declared impossible by Kenneth Arrow, one of its early designers. In 1978 to test this notion I attempted a field study in which a random sample of the British public was asked to say how *they* would wish their taxes to be spent. The main finding was that 70% said they would spend it differently from the way in which it had been spent by British Chancellors of the Exchequer. (The detailed findings are reported in Chapter 6 of *Over-Ruled on Welfare*, IEA, 1979.)

Public choice economists, including Nicholas Tideman (a colleague of Buchanan and Tullock) have worked on incentives that could induce voters to reveal their preferences. Referenda and plebiscites may be feasible for single issues. For some years I have attempted since 1963 to discover micro-preferences by field studies offering random samples of British heads of households two amounts of returned taxes in the form of vouchers for education and medical care. The finding has been a clear long-term rise over 15 years in the acceptance of vouchers worth a third or a half of the cost of private services, topped up to pay the full cost. The result is a hypothetical demand curve of around unit price-elasticity and with some income-elasticity. (These results are reported in Chapter 5 of *Over-Ruled on Welfare*.)

The theory of voting indicates that majority ruling satisfied voters in the middle of the range (the median) rather than voters at either extreme. The outcome of all the taxes raised and benefits disposed by the welfare state is not to transfer wealth from rich to poor but from rich and poor to the rela-

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tively affluent middle classes.

The new economics of politics concludes that the theory of public *finance,* in which economists analyze the most desirable or efficient pattern of taxation, cannot be divorced from a theory of *politics,* which explains how taxation is likely to be spent in a world in which the politicians and bureaucrats have motivations that may, and usually do, differ from most of the public. Here Gordon Tullock has found that majority voting on government spending financed by taxation can over-extend the budget and make *everyone* worse off than with no collective action at all!

Another early Founding Father, Anthony Downs, had in 1957 formulated a tendency among political parties in a two-party system to converge in their policies. A further finding is that parties in three-party systems tend to diverge. This may explain the more radical 'liberal' (anti-collectivist) doctrinal position of the British Thatcher Government and the tendency to the 'hard left' of the Labour Party.

Two new 'economics of politics' economists, Tullock and William Niskanen (now a Reagan economic adviser) have demonstrated that bureaucrats must not be supposed to be able to act as neutral, 'face-less' public servants or eunuchs faithfully executing orders from Ministers; they are policy *makers* concerned to expand the size of their bureau because their salaries and frills of office vary directly with the size of the budgets they administer. Niskanen concluded that taxpayers derive no net benefit from public goods because the benefits are appropriated by the bureaucrats.

Two more new economists of politics, Mark Crain and Robert D. Tollison have developed evidence that politicians respond to economic incentives much as everyone else. In other words, to elect any man a political representative does not make him a saint. And to appoint a man a public official does not make him a public benefactor.

The American constitution restraints on government expansion that worked for two centuries seem to have failed in recent years. Buchanan has concluded that the Leviathan-state has become a reality.

A conclusion of the economics of politics is that Keynesian economists have ignored the asymmetry in the policy of budget deficits to deal with depressions and surpluses to deal with inflationary booms. Politicians are eager to create deficits

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because it is popular to spend. They shrink from surpluses because it is unpopular to tax.

Nevertheless government can be constrained. A people can refuse to accept the near Hobbesian nightmare in which the inclinations of the government to spend, expand and inflate are unrestrained. Buchanan maintains that USA experience shows that constitutions can restrain governments. Bennett has also shown that government can avoid even constitutional restraints. I have argued for some years that a more effective discipline on government would be to require it – by constitution, or convention or custom – to *sell* its services for market prices – fees, charges, etc. (The only exceptions would be public goods, and even here the new economists are working on ingenious devices.) Hence the rule of thumb: tax where you must, charge where you can. Charging would prevent government going undergound, since it would have nothing to spend on extravagant adventures if its services had to cover their costs in the open market. (The argument is amplified in *Charge*, 1977, which estimated that roughly only half of British government services in kind are public goods. Since then a 1980 study has said that only a tenth or even less of local government expenditure is on local public goods.)

4. The New Economics of Charity

The new economic counterrevolution has liberated the noblest instinct of man – to help people in need by giving, charity, philanthropy – from its sociological confusion and shown it to be rational behavior that can be analyzed by micro-economics. (Macro-economic 'giving' by compulsion through the state and taxation loses the spirit of voluntary charity.)

My interest in the economics of politics and the political market thus led me to the economics of charity and the charity market. With the assistance of Gordon Tullock, who suggested two young American economists, I assembled in 1973 an Anglo-American collection of essays by some of the main exponents of the new economics of charity.

The case for the market has long been outmaneuvered to appear on the moral defensive. Largely as the result of the influence of sociologists, led by the late R.M. Titmuss, selling has been represented as sordid or selfish but giving as moral and selfless. And from this superficial contrast has followed the

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familiar contempt for commercialism, competition and capitalism. In both Britain and the USA, in the 1970s the argument was crystallized by the question whether a shortage of blood could or should be alleviated by paying blood donors. The sociological or Titmuss case was questioned early in IEA papers by Michael Cooper and A.J. Culyer, who had argued in 1968 that paying for blood might supplement its supply if voluntary donors left a shortage. A counterattack by Titmuss in a 1971 book was condemned in the USA by economists Simon Rottenberg and Kenneth Arrow and sociologist Nathan Glazer.

The new economics of giving or philanthropy has been developed by Gordon Tullock, Gary Becker, Thomas Ireland, David Johnson and others in the USA, and by Cooper and Culyer in Britain.

The sociologists have confused the morals/ethics of giving with its economics, but economists must point to the economic principles that make for efficiency in giving. Selling is clearly not immoral if both parties benefit in a voluntary exchange. In contrast giving can be immoral if it creates a relationship of indebtedness or dependency. Collective enforced giving, as in the welfare state, can be immoral if it weakens the capacity and the will to develop independence. And economic analysis can help giving to be efficient.

The immorality of giving through the welfare state is clear from the increasing evidence that it has failed to redistribute income from rich to poor. The 'public choice' explanation is the median voter theorem: the middle voters use their *political* power to gain at the expense of the poor as well as the rich. I have also argued (above) that they use their *cultural* power to gain at the expense of the poor. In particular expenditure on state education and the National Health Service – which were supposed to help the poor with the taxes on the rich – are probably anti-egalitarian. Giving through the state has gone sour, and Tullock's conclusion is that the poor might be better off if all who receive a significant part of their incomes from government were deprived of their votes.

G. Becker has applied classical micro-economic analysis to clarify the activity of giving. Since all resources (including time) are scarce, giving may be the most efficient or least costly way of winning the approval or esteem of other people, contrasted with the cost of acquiring political power or other distinction. And as the prices of these alternatives change over time, giving

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may increase or decrease. Variations in giving do not necessarily indicate changes in selflessness over time or between classes or societies but in the underlying costs and prices of time and other resources. Charity can be explained better by micro-economics than by obscure sociological or ethical theory.

It follows, also, ahat lowering taxes for compulsory joint giving through state welfare would not necessarily reduce giving or welfare in total, because lower taxes would enlarge individuals' purchasing power available for expenditure, including on charity.

Charity, giving, philanthropy is one of the new subjects into which economic 'imperialism' has extended its powers of analysis and, I would say, replaced other social sciences that had shed little, or less, light. The other subjects are reviewed below.

5. Enclosure the Key to Productivity by Property Rights

What belongs to everyone belongs to no one. This apparent contradiction contains the essence of the new economics of property rights. (It is also the secret behind the fundamental superiority of private ownership over 'public' ownership, of capitalism over socialism.) Its meaning, quite simply, is that, if property belongs to everyone, or to a large number of people, no single individual will have an inducement to preserve, improve or use it effectively, because the large effort required will far outweigh the small benefit to him. The century-old claim that private property wil be used selfishly for the private benefit of the owner but common or public property will be worked unselfishly for the benefit of all is also revealed as a myth. In the sociological jargon of a 'caring' society: if everyone owns something, who 'cares?' And, again, in government services or socialism in general: if the taxpayer pays, who 'cares?'

This well established truth is the essence behind the brilliant reinterpretation of history by two 'new' American historical economists, Douglass North and Robert Thomas. They explain the transition from the stagnation of the feudal and guild systems to the progress, growth and rise in living standards first of Holland and then England by the transition from common property (usually in land) to private property by the enclosure of plots for the exclusive use of individual owners. And the secret of growth was that the individual owner would work

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harder and use tools to improve the productivity of the land because he would not have to share it with other owners who worked less hard or were less enterprising.

This is also the simple explanation of the low productivity of collectivized land in the USSR and the much higher productivity of private plots in Western Europe. And it is the reason why the productivity of the seabeds now debated by the new law of the seas will be maximized when means are found to enclose and appropriate parts of it to individual owners who will find it profitable to invest in making them productive.

The theory of developing property rights evolved historically by D. North and R. Thomas sheds new light on pre-industrial institutions. Serfdom was payment in labor on the lord's land rather than cash for his public goods of defence, security, justice, courts, necessary to farm with assurance by reducing 'information' and 'transaction' costs. Custom involved lower transaction costs than contract in frequent revision of the 'terms of trade' between public goods and labor. Payment in kind was inconvenient because the absence of developed markets made the transaction costs of measuring value high. Paying by taxes was impracticable because money was not widely used. Serfs changed to land owning peasant farmers because the growth in population brought new land into cultivation, increased specialization and exchange, and induced the serfs to bid for private plots as money and credit came into use to buy and sell surplus goods in markets.

The theory of property rights therefore emphasized that economic growth was founded not, as was the established view, on technical advance in the Industrial Revolution, but on the development and refinement of law. There was an increase in population and advance in agricultural techniques in the 11th century, but little growth. There was further population and technical advance in the 17th-18th centuries, and there was also unprecedented growth. The reason for the difference in growth is that in the 11th century land was largely communally owned with little or no individual incentives to invest and expand production. By the 17th-18th centuries there was enough privately owned land to make investment profitable. The difference was therefore not technology, but the law of property. The peasant owner had exclusive property rights; he knew the costs and benefits of investment, and he could make decisions knowing that he (and his family) would benefit. That was

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the secret of growth and advance in living standards.

Individual ownership also reduced or removed the transaction costs (which include 'persuasion' or 'consensus' costs) of organizing agreement between all the owners. The individual could advance on his own with no 'persuasion' costs. And in practice when one owner forged ahead, the *information* costs were reduced, because the others could see what gain was possible from work and investment.

Here, from the early history of Europe, is a demonstration of the power of *inequality* in demonstrating progress and mobilizing emulation; equality if enforced by law or custom would have slowed down or stifled progress, as it is now slowed down or stifled in collectivized societies. Moreover, the ability to advance as individuals was more egalitarian, since the power to persuade and organize others in collective movements is itself unequal. And that is why capitalism is potentially more equal than socialism.

The reason why advance began in Holland before England is the historical accident that the dukes of Burgundy in the 15th century resisted the attempts of the guilds and corporations to monopolize trade and so encouraged farmers to produce surpluses to sell to the towns, which in turn stimulated fairs and markets for the general expansion of specialization and exchange. In England common land for grazing lasted longer and the emergence of private property rights was delayed; the common pastures were therefore over-grazed until market forces – the desire to farm more efficiently – led to the enclosure movement, with its more intensive investment and higher productivity. What is now in England called 'privatisation' (the new word for desocialization) was the key to economic progress.

Thus again the new economics demonstrates its microeconomic origins in explaining historical change by movements in the prices of land, labor and time and the rewards to individual effort and investment (which are also its prices).

Unfortunately, in our day, as the economics of politics explains, authority, which was at first created by the people to provide the public goods of defence and justice, has grown to provide far more, and is even in danger of enveloping and suffocating society by extending to services that are not public goods. Such is the scope for the reduction of government indicated by the new economics.

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6. Money, Inflation and Unemployment

The new economics of money takes several forms. The most familiar is the monetarist explanation of inflation and unemployment, in which the leading figure is Milton Friedman, which provides rules for government to observe in the control of the supply of money. The second is derived from the economics of politics: J.M. Buchanan and a colleague maintain that no monetary rule will work in a democracy unless government is disciplined by the constitution. The third would be ultimately even more revolutionary in removing the power over money from government – the argument of Hayek that money should be provided not by a political monopoly but by competitive private suppliers. Finally there is a new classical theory of the economy formulated by the British economist Patrick Minford.

The writings of Milton Friedman and other monetarists since the 1950s have passed into the literature of economics and are accessible to students and observers of public policy. The Buchanan-Wagner thesis first appeared in a book in 1977, the argument of which was refined and applied to Britain in an IEA paper in 1978. The *locus classicus* of F.A. Hayek on the demonopolization and depoliticization of money is a short book published in 1976 by the IEA, to which he turned as a tribute to the sponsorship of his earlier thinking and of its work on micro-economics in general. The Minford theory first appeared in 1982, refined from USA thinking in the 1970s.

The central and fatal criticism of Keynes was the micro-economic argument of Hayek that managing *total* demand by manipulating the supply of money would not ensure lasting full employment because the volume of unemployment depended on the ability of the price of labor (wage, etc.) to adjust the demand for and the supply of labor *of each kind.* Keynes had restored the old view, going back to the early 18th century, formulated by John Law:

> "as the additional money will give work to people who were idle and make those already working to earn more, the output will increase and industry will prosper."

The micro-economic counterrevolution against Keynesian macro-economics is to demonstrate that unemployment depends on *relative* prices, not on the movement of *average* prices manipulated by managing the total supply of money.

The Friedman monetarist counterrevolution against Keynes

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may seem to do battle with him in macro-economics, since it speaks of managing the money supply so that "a steady rate of monetary growth at a moderate level can provide a framework under which a country can have little inflation and much growth" (a lecture published by the IEA in 1970). But the foundations are micro-economic, and that, as argued above, is why it is superior to Keynesian or other macro-economic theorics of inflation and unemployment. The conclusion from the Friedman analysis is that the causes of inflation and unemployment are not inherent in capitalism but lie in the activity of government; and here the important question is whether rules can be evolved to control government and its behavior, or whether it is in the nature of government to act as it does.

A basic Keynesian 'model' envisages that government management of taxation, expenditure and interest rates affects the whole economic system through the operation of 'multipliers' and 'accelerators.' Through the (falling) 'marginal propensity to consume,' the proportion of additional income spent on consumption falls relatively to the proportion saved. Micro-economically this was true of each earner or household, but macro-economically it was not true that, as national (or average) income per head rose over the long run a higher proprotion of total income would be saved, so that investment would be insufficient to maintain employment. Friedman demonstrated that in the long run a *constant* proportion of rising national income would be saved because individuals do not change their consumption in response to *short* term changes in wages. They have a long term conception of their income and expenditure — the Friedman notions of 'permanent income' and the 'life cycle.' Consumption is therefore more stable than supposed by Keynesian macro-models. And so are market economics ('capitalism') in general. Extensive government manipulation is therefore first, unnecessary; or, second, it is damaging, because it intensifies the amplitude of the mild fluctuations that would otherwise exist; or, third, even if it might in theory even out the fluctuations, government could not or would not manipulate as required. And in this objection, the new economics of monetarism and public (political) choice join forces.

The Friedman critique also rejected the notion that government could 'fune tune' the economy: short term policies were pretentious and ineffective, if not harmful. Here there is a link with micro-analysis. The economy comprises large numbers of

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decisions made by individual buyers and sellers, employers and employees, savers and investors; these decisions are refelcted in prices of all kinds (wages, salaries, interest rates, rents, etc.) in the market, and will be made with more assurance if avoidable changes in prices can be avoided by a stable, gently growing, supply of money to minimize both inflation (and deflation) and unnecessary unemployment (or over-full employment). Friedman thus arrives at macro-economic (money supply) policy through micro-analysis of the economic system.

This can be regarded as the main element in the defect of Keynesianism because it gives them more power over taxation, expenditure and borrowing, but they will fail if they follow other governments, as in Britain, that tried Keynesianism and found it led to inflation. Even the British Cabinet recognized in 1976 that it was not possible to end recession by spending. The more recent talk in Britain – and other countries – of 'reflation' is nerviously allied to proposals for 'income policies' to prevent the *inflation* that, it is implied, would otherwise follow. But the experience is that 'income policies' are either voluntary and short lived or, if they are compulsory by statute, lead to creeping collectivization which few in Europe want once they understand the inevitable train of events.

Other elements in the monetarist counterrevolution are refinements – not least, the demonstration that government cannot simply 'trade off' inflation against unemployment; the 'natural' rate of unemployment that is compatible with stable prices generally and determined by underlying structural conditions such as national insurance unemployment benefit, trade union power and housing subsidies that restrict the mobility of labor; the slow adjustments of long term labor contracts and wages and the impulse to reduce transaction costs of renegotiation as businessmen and consumers react to uncertainty and imperfect information.

Monetarists would thus leave money in the control of government, but disciplined by rules. Two further elements in the new economics also seek strong disciplines on government.

In 1977 J.M. Buchanan, with a colleague at Blacksburg, Virginia, Richard Wagner, wrote a condemnation of Keynesianism on the ground that it was not merely inaccurate in its economics but, even worse, unrealistic in its politics. Keynes had argued that the free enterprise system could settle into an equilibrium with less than full employment. The solution was

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for government to use the budget to maintain the whole economy in full employment by neutralizing fluctuations in activity – boom and slump – with equal and opposite fluctuations in budgetary surpluses or deficits.

This diagnosis was questioned from its very beginning in 1936 by economists in the classical tradition, not least, Hayek and Hutt. The Buchanan-Wagner criticism was essentially that the instrument Keynes had devised, budget deficits and surpluses to stabilize the economy, could not be used in representative democracy, with its sectional pressures and irresistible importunities on politicians obsessed with keeping power. Their conclusion was that only constitutional disciplines could prevent government from misusing the power to over spend or under tax. Government would be tempted to expand budget deficits to avoid slumps but scared to create surpluses in order to avoid booms. Government was not a benign, neutral 'external' power, keeping the economy on an even keel; it was an interested 'internal' power working for its own ends. The interest of government is not the same as that of the people but in *conflict* with it, because its short term electoral objective operates against the long term public interest. Keynes had opened the floodgates to growth of government by providing politicians with an academically respectable argument for unbalancing budgets by borrowing or printing money.

Here again, the Buchanan-Wagner constitutional critique of government in monetary policy has roots in British classical economics. The classical economists understand that a constitutional rule was required to make government balance its budget, otherwise representative democracy would tend towards budget deficits and uncontrolled growth of government expenditure. The rule became a constitutional convention. And it protected Britain from uncontrolled state expansion not because government was *technically* incapable but *politically* incapable of controlling its budgets. Keynes' error was in the economics of politics; he supposed that economic policy was made by wise politicians, capable of ignoring political pressures or temptations, and advised by disinterested economic technocrats called 'public servants.' In practice politicians and bureaucrats given the power to borrow rather than tied by the obligation to tax or charge for services took off into the financial stratosphere. (96% of the inflation in England since the year 1281 in the feudal system has followed Keynes' 1936 bible, *The*

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General Theory!) The economic systems of the West became asymmetrical by developing a bias towards state expansion and inflation. Keynesianism – or the use of Keynes made by politicians – has made the West market economies of free enterprise capitalism unstable. A new monetary and fiscal constitution was essential to discipline government and reduce the instabilities. Otherwise the corruption of Keynesianism would destroy Western democracy.

The third element in the new monetary economics is the most drastic. Indeed, when it was put to a former Governor of the Bank of England, he responded sympathetically "That is for the day after tomorrow." But we have learnt that what practical men, preoccupied with day-to-day pressures and crises, believe is politically impossible, can rapidly become possible when circumstances change and the evils of current thinking and policy become too acute to ignore. In any event, the task of economists is to ignore what is currently (but often erroneously) thought to be 'politically impossible' and by argument to help make it politically possible.

In a lecture in Switzerland in 1975 F.A. Hayek had argued that the power of government to force its people to use its currency as the only legal tender should be broken by allowing them to use any *other* government money. The British could then be able to use, say, Deutschmarks if they preferred. This new freedom of international money would induce national governments to limit the output of their currency and so maintain its value. In the 1976 IEA book he argued further that government be deprived of its power to issue money as the only monopoly source *within* a country. Although it might continue to issue government money, it should have to compete with private suppliers of money. This revolutionary proposal is one of the most far-reaching in the new economics, and its implications have yet to be considered by economists, still less by politicians or bankers. For it controverts the view held by economists for 200 years (though not by Adam Smith) that the issue of money is one of the essential functions of government.

Hayek analyzed four defects of the Western world: the recurring bouts of acute inflation and deflation that have intensified in the last 60 years; the more deep-seated recurring waves of depression and unemployment that have been 'a justified grievance' against free enterprise capitalism; the spectacular increase in government expenditure over the last 35

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years; and the government restriction on the international movement of men, money and capital that safeguards the ability of dissidents to flee from oppression – such as British doctors escaping from the National Health Service or Russian writers from communist orthodoxy. All four evils have a common origin, the government monopoly of money, and a common cure, its replacement by *competition* from private suppliers. The solution, as for all commodities and services except public goods, was to discipline government by the market.

Hayek refuted the conventional view that money has to be created 'legal tender' by government. He argued that, like law, language and morals, it would become acceptable as legal tender if it was found reliable in value by experience and usage, and no law could make money 'legal tender' if it was found unreliable. If money had to be managed by government, a gold standard, despite its imperfections, was tolerable since it required government to relate the supply and value of its currency to an outside standard over which it had no control. But this system would not be as effective as subjecting government money to the competition of other sources of money.

The reason again has its roots in the economics of politics. It is not surprising that Tullock had an early article – in 1956 – in which the idea was approached. So long as democratic government is subject to pressure by organized interests, we cannot count on its benevolence, intelligence or understanding to give us the institutions we want. Here Keynes, who in 1945 said the problem was "insufficiency of cleverness," was again wrong. What was required was sheer self-interest to induce government to do what was required. In other words, in the language of public choice, government has to have *incentives* to do what is desirable. And the inducement would be the risk of losing its function as an issuer of currency if people came to prefer private currencies or the currencies of other governments.

Unknown to Hayek, the case for competing currencies had been explained in a paper written by Benjamin Klein in the USA published in 1975. The idea has clearly taken root among younger economists and we shall hear more of it. "The day after tomorrow" may come sooner than the Governor of the Bank of England thought.

Keynes taught demand management, or rather that the management of demand was the way to change supply. In

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recent years economists have emphasized more direct action on supply – 'supply-side' economics – by reduced taxes to intensify incentives to innovate, take risks and invest and thus thaw out the supply side of industry frozen by high taxation, monopoly, subsidies and tariffs. If tax cuts, and their concomitant cuts in government expenditure, have not had these effects so far it is because they have been too small, and further tax cuts could be made possible by reducing expenditures on superfluous welfare and social security benefits, so that individuals can cover themselves by private insurance, and shifting other services to the market.

A new counterassault on macro-economics is mounted by P. Minford in a refined classical view of the economy. He was formerly deeply steeped in Keynesian macro-thinking but has propounded a micro-economic Rational Expectations theory derived from an idea of John Muth of Massachusetts Institute of Technology in 1961 that economic expectations are based on the efficient use of available information. This approach was ignored for some years until the 1970s when its importance was seen by Robert Lucas of Carnegie-Mellon University and Alan Walters (then of the London School of Economics, later at Johns Hopkins University and now Economic Adviser to the Prime Minister of Britain). They saw that changes in money supply that are *anticipated* have smaller effects on output and larger effects on prices than if they are *unanticipated.* An increase in the supply of money could then raise prices but not expand output. Even a change in government or opinion polls affects market expectations and reactions. The changes in policy are discounted before they occur. And in practice, as inflationary policies have come to be expected, they have been soaked up in prices and have had lessening stimulus on production. Government can therefore become impotent in economic management to master inflation or create full employment, forcefully argued by C.K. Rowley in *The Journal of Economic Affairs* (as the Austrians argue, economic law has again prevailed over political power). Yet these market reactions, familiar in everyday buying and selling, and long studied by micro-economists, were virtually ignored by macro-economists as reflecting subjective sentiment not worthy of objective economic science.

The Rational Expectations revolution would transform the economics of government, which may be effective only if a

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change in policy is sharp and determined and so unanticipated. (Hayek has urged a six-month rather than a five-year destruction of inflation.) Gradual change may be ineffective because it can be anticipated: only shock treatment may work. This view may explain why Margaret Thatcher's *unexpected* determination to risk the politically adverse effects of restricted money supply and government borrowing – not least, a rise in unemployment – has at last mastered the 10-year old British inflation as well as raised productivity, lowered interest rates, revived demand and diminished trade union obstruction to technological innovation. Once again, the economists are returning to the basic, day-to-day micro-economic market reactions to explain macro-economic policy. Keynes' solution for unemployment of digging holes and filling them was rightly recognized as nonsense by practical men who worked in, and economists who studied, markets.

P. Minford is one of the sophisticated economists who have rejected Keynesian macro-economics. Michael Bennstock has subjected macro-models to a neo-classical critique. Alan Budd has written a book in which he indicates a conversion of faith from the state to the market. All three have worked at the British Treasury and know its macro-models.

7. The Failure of Government Regulation

The comfortable conventional view of government was that it could intervene in the economy to regulate industries that were exploiting the consumer. The new economics of George Stigler, the 1982 Economics Nobel Laureate, and other economists is that regulation ends by favoring the regulated industries. Government regulation of USA transport, energy, banking, etc., is imposing costs on industry, which passes them on to the public as consumers in higher prices; or they appear as high taxes; and both lower living standards. Once again, there is 'government failure' to set against the 'market failure' it was supposed to correct.

Much research into the effects of government regulation has been pursued by economists in North America, and their findings must be a warning to other countries. Road transport charges were found to be around half as much again as in countries without regulation like Belgium. Short distance urban transport passengers were found to subsidize long distance

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passengers. The market produced 'jitneys' – large taxis – which gave passengers more flexibility in deciding routes and fare costs, but they were suppressed in favor of local government transport; so people made more use of private cars, and road congestion intensified: the market worked after all, but government made it produce bad results. The subsidization of municipal road transport and state railway systems – not least, in Europe – imposes concealed (or under-stated) burdens on private transport and industry generally.

Regulation in health preservation has slowed down the production of new medicines because the regulatory authority is over cautious – it risks being discredited more by the highly publicized adverse consequences of new drugs than by the unrevealed lives suppressed drugs would have saved. Over caution in compulsory seat belts for motor-cars shifts injury or the loss of life to pedestrians. Continued protection of long established 'public utilities' from competition from new services made possible by technological innovation – as in electricity, telephone, broadcasting and postal services – subsidizes producers at the expense of consumers. Even worse, since the market for them is restricted by government regulation, the production of new technology is slowed down.

Much the same applies to air transport (almost the only USA industry where deregulation has been allowed to demonstrate its benefits in lower fares and better services). In all, the results of governmental regulation, now demonstrated by far-reaching research, have been not only failure to achieve their aim – to protect the consumer; they have penalized the consumer at the expense of established producers. Perhaps Britain demonstrates even more than most countries the producer opposition to competition from new technology: its trade unions have been the most reactionary force in slowing down the adaptation of industry protected by government ownership or regulation in fuel (especially coal), transport (especially rail), telecommunications, education and medical care.

A major lesson, I would emphasize, is that government regulation is ineffective in protecting man as consumer from *himself* as producer. If the producer interest is allowed to dominate and rampage over the economy and society, the result is gradual economic debilitation, stagnation and decay. That was the result of medieval producer dominance in the guild system of England, Spain and elsewhere. It is the danger

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that now confronts the countries of Europe until man as producer disciplines himself to accept the primacy of *his* interest as consumer. That was the hope of the European Common Market, which has largely worked internally, except in agriculture, though not between it and the outside world. But it has confirmed the lesson of history that the market is better than government, in making the consumer interest prevail. To borrow the language of the new economics, the West will have to recognize that the market is, in sense, a public good from which all benefit by the enthronement of the consumer and to which 'free-riders' should contribute. This is what the members of the Common Market have in effect agreed to do: they have recognized that Europe is a public good despite the risks and dangers of party politics and bureaucracy revealed by the economics of political choice and confirmed by the Brussels apparatchiks. The difficulty is that other countries such as the USSR and East European countries gain from the information derived from the prices of world free market economies, and there is no easy or direct way to make them pay for the 'free ride' they take on the capitalist public good of pricing. But within the free world the failure of government regulation is further damaging argument against the state and for the market.

The role of research in establishing empirical evidence, I should add, is not always indispensable. Where the evidence is persuasive, it strengthens the influence of the general logical, *a priori,* argument. If it is contestable, it may blur the general argument. In any event, the advocates of state economy, regulation and welfare rarely used the 'facts and figures' of empirical research, yet their influence over the minds of men and women, especially of the young, is enormous. Indeed, their influence continues despite contrary evidence from research of repeated government failure. The sources of influence are therefore not necessarily 'facts and figures.' Moreover, the case for the market cannot wait for empirical evidence, since the market must be established *before* its benefits can be produced, seen, and measured. Down the ages knowledge and understanding have proceeded by the recognition of new insights confirmed by experience. The insight that voluntary welfare would have developed in the absence of the welfare state cannot be established by empirical research; but it does not require 'evidence': it is selfevident because logically persuasive. The new economics rests more on analytical insight than on empirical evidence.

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8. The Theory of Human Self-Investment

A powerful part of the new economic counterrevolution is its invasion of new territories and subjects thought to be the province of sociology, political science and other social sciences – the family, the household, marriage, love, fertility, prostitution, war conscription, diplomacy, non-profit enterprises, teaching techniques, biology, crime, medical care systems, like the British (or Italian) National Health Service, based on the principle of *equal* service in a period of increasingly *varying* expectations; it will cause them to break down unless incomes are equalized, which is impracticable in any kind of economic system, capitalist or socialist, or incomes are spent similarly, which would require coercion unacceptable in Western (and Eastern) Europe.

Similar analysis applies to self-investment in education and to the purchase of labor-saving devices such as washing machines. As productivity rises, the value or price of time spent on unpaid work at home or at paid work in the market rises. So we invest more in education. And we buy more domestic equipment that makes kitchens look like the engine room of ships. The aim again is to save increasingly costly time. We have not been 'persuaded' into buying useless 'gadgets' as Kenneth Galbraith and other critics of advertizing, the market and the familiar bogey, 'capitalism,' have *persuaded* (!) gullible but superficial critics of the free market economy. (This element in the new economics was anticipated in early IEA books on advertizing in 1959 and 1962 by Harris and Seldon.)

9. The Externalities of the Welfare State

Research in the USA has revealed that, as in transport and telecommunications, government regulation has largely failed in its purpose in the welfare state. It has largely disfavored the poor and the unfortunate – for two reasons. First, education, medical care, housing, pensions and other social security or social insurance systems are operated, as public choice analysis shows, by the strong in their own interests at the expense of the weak. Second (and this is usually overlooked by the new economists although it occurs naturally to an economist in the Austrian tradition), the welfare state has suppressed the emergence of voluntary welfare organizations of all kinds that would have catered more effectively for the requirements and preferences of the poor – from voluntary 'mutual' organizations such

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as provident insurance to commercial entrepreneurship. These consumer oriented and competitive services were emerging before state welfare repressed them, and they will not develop as much as they would as long as the welfare state continues.

There is a further argument of the new economists that could be refined and deployed much more than it has been. The sociologists or economists argue that state welfare is essential to generalize the external benefits – in literacy, health, housing, income when earnings are removed by illness, unemployment or age – that would not be generated if individuals were left to their own efforts in the market. These are the supposed 'externalities' of the welfare state.

It is remarkable that these academics emphasize the external benefits but rarely the external costs and other damage of the welfare state. This is a theme that the new economists have largely ignored. Yet a summary list demonstrates the high *price* that is being paid for the small benefits, if any, of the welfare state:

1. high taxation which depresses incentives, the inducement to take risks, and therefore production
2. the cost of tax collection
3. the cost of minimizing tax 'avoision' – the tax rejection that proceeds from (legal) avoidance to (illegal) evasion
4. the effect of tax 'avoision' in undermining the respect for law
5. the cost of bureaucracy
6. the neglect of quality in government services
7. the denial of choice
8. the regressive effect of replacing *price* by *power* in government services
9. monopoly
10. the repression of innovation
11. the strike threat of government sector trade unions
12. syndicalism in place of consumer sovereignty
13. social conflict (below)
14. loss of resources in a world market, as British doctors by emigration
15. corruption
16. resistance to change from political, bureaucratic, professional and trade union vested interests
17. loss of spontaneous development of market based,

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consumer oriented mutual or commercial services

The final lesson from this catalogue (which could be lengthened) is that the market, as Böhm-Bawerk emphasized, cannot be suppressed by the state but, if it is fragmented, it escapes from the state and harms the people who remain locked in.

10. The New Economics of Minimal Government

The most fundamental and most revolutionary element in the new economics — the element that provides the scientific basis for the instinctive reaction of the common people against the state — reappraises critically what the classical Jeremy Bentham described as the 'agenda' of government. Adam Smith in 1776 defined them (apart from external defense and internal law and order) as goods or services that:

> "can never be for the interest of any individual, or small number of individuals, to erect and maintain: because the profit can never repay the expense . . . . though it may frequently do much more than repay it to a great society."

He did not include money among the 'agenda,' as noted in Section 6. In 1926 J.M. Keynes' formulation of the agenda was remarkably similar: he said the role of the state was:

> ". . . not to do things which individuals are doing already and to do them a little better or a little worse but to do those things which are not done at all."

In our day these functions are described as collective or 'public goods': essentially those that cannot be refused to people who refuse to pay (like defense, law and order), or for which the payments (prices, charges, fees) would yield less than the costs of collection so that although technically not public goods they are economically public goods (like park lands). Whether they should be provided at all would have to be decided by the people (by some form of majority, although unanimity is the only certain evidence that everyone wants them) and paid for by taxes.

What is clear is that all European states now provide far more than public goods, and the economics of government, politics, democracy and bureaucracy shows why government has grown far beyond its required functions (which I have suggested would reduce it in Britain to about a third). But it goes further and is showing that government does not necessarily have to supply even what have long been regarded as public goods. Public

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choice economists have been trying to evolve methods of revealing preferences in public goods by referenda, vetoes, or taxes or financial inducements (or penalties for concealing preferences).

Professor Arrow's 'impossibility theorem' demonstrates that there is no way by voting to assemble a collective decision on the disposition of resources in a 'social welfare function.' This 'theorem' nevertheless implied that, if such a voting system could be constituted, government would be able to carry out the collective wish. It implied that representative government could work.

The public choice economists have demonstrated that, even if government knew the aggregated social decision, it might *not* execute it because its own interests could or would conflict with it. In short, representative democracy does *not* necessarily work.

This is the alarming conclusion from the new economics. The democratic notion of representative government is as improbable as the technical device of a social welfare function, but for the political reason that the interests of the people – politicians, their advisers and officials – do not necessarily coincide with those of the people they 'represent.' Moreover, to this conflict of interest we must add the natural but fatal tendency of democratic government to pass laws that grant favors to vocal interests. So everyone is induced to form pressure groups, and if government yields to them it 'represents' not the people in general but the groups that are organized. Finally, I must add an element that tends to be overlooked in this analysis: *there is no equality in the ability or inclination to organize*. 'Representative' democracy is therefore not only not representative; it is inequitable, arbitrary and probably prejudiced against the *least* able to make their opinions heard or claims heeded in the general political clamor that is more like a shouting match than an election in which every elector's vote counts equally. And that is what we observe in the media – especially television – used by the spokesmen of vested interests, usually of producers because they are more concentrated than consumers.

The consequence is that so-called 'representative' democracy, in conception the ideal form of government, has in day-to-day practice endangered social harmony, provoked social conflict, and risked political cohesion. Since the decisions on government

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disposal of resources are made by majorities, minorities – by faith, religion, sex, occupation, region, nationality – see themselves at the mercy of majorities whom they cannot hope to displace. Scotsmen in Britain will remain a minority forever. So will Basques or Catalans in Spain. Or Catholics in Northern Ireland. Or Portestant in Spain. *The only ultimate solution, so long as government provides non-public goods, is not by voting but by regional separatism or racial secession from a state that wields the vast powers of 20th century democracies.*

There is one other solution: *to reduce government to irreducible public goods.* That is the conclusion from the Buchanan-Tullock school. The future view that there are no public goods produces the solution, or what may now seem the Utopian but is the closely argued case, of the USA stream of new economists headed by Murray Rothbard, who follows in the Austrian tradition of the late Ludwig von Mises and David Friedman. Although regarded as on the 'right' in party lable terms, the self-chosen description of 'anarcho-capitalists' shows their affinity with the 'gentle' philosophic 'anarchists' on the 'left' who want minimal or no government, except that the new economists favor private ownership as the better safeguard against the state than the public ownership (even of self-managed worker cooperatives favored on the 'left.'

The Rothbard-Friedman new economists follow the classical tradition but take it further by questioning the economics of the conventional public goods. They argue that, even if not yet, technological change will make most of all of them, even some forms of defence and justice, police and roads, saleable to individuals, so that they will not have to be provided by government and financed by taxes. Education could be provided in the market in response to parents' preferences, facilitated in, say, 10 years in which vouchers to pay for education from competing sources replaced 'free' education provided by monopolistic politicians and officials. Personal medical care could be supplied similarly for most people and eventually for all as the remaining older people who cannot pay or who cannot handle money have passed away. As social benefits and other services in kind are replaced by a reverse income tax, all citizens would have the dignity of choice exercized by consumers who pay. The remaining inefficient representative government in politics could then be removed since every man would effectively represent himself in the market. Organizing vocal vested interests

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would become unnecessary. The tyranny of majorities would have passed away. Social cohesion would be secured by voluntary association. The new economics, like classical political economy, would have shown how to put government into its insignificant place.

Envoi

This short paper has been able to review in outline only the main tributaries to the mainstream of the new economics. The new economists are growing in number, ideas and literary output from year to year.

The new economics that has flowered during the last 15 years, mainly in the USA, by brilliant insight and technical sophistication is the spearhead of an intellectual counter-revolution of decades. It is reasserting in new forms and new language the essence of classical British and European political economy, and demonstrating its latent strength by extending it from working and earning to all human behavior: in government as well as industry, in the family as well as in the firm, mutual aid as well as commercial exchange, giving as well as selling. It is reaffirming the principle, repeatedly confirmed by experience in Eastern as well as in Western Europe, Africa and Asia as well as America and Australasia, that civilized, harmonious society cannot be imposed by government but must rest on the power of individuals to decide the degree of acceptable coercion. And it is demonstrating that fallible individuals have inducement to correct error but government to conceal and perpetuate it.

For 'old' economists, and the 'old' politicians in Europe and elsewhere who are still misled by them, the most damaging conclusion is that government is ill-equipped, inefficient and unrepresentative in performing the role argued for it over a century by appeals to poverty, inequality, economy, monopoly, regulation, externality, and macro-economic management. No analysis or evidence now justifies continuation of government powers, functions or services on their post-war scale. The old economics – macro in method, collectivist in spirit, inflationist in results – lingers because the men now in their 50s or 60s who learned it in the immediate post-war years and wrongly thought the war economy had validated it, will not admit error in their last 10 or 15 years of power in government or of

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influence in academia and the media. But the new economics has undermined its legitimacy. The post-war world has revealed as myths its promises to produce prosperity, liberty, equality and fraternity.

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IDEOLOGY AND LABOR LAW IN AMERICA

By Barry W. Poulson

Labor relations in America have evolved from sporadic discontinuous negotiations between employers and groups of employees to formalized collective bargaining insititutions circumscribed by a legal framework that defines the rights of employers and employees. The usual practice is to trace the legal framework for labor relations in terms of several distinct phases including 1) an early period of government hostility to labor unions, 2) a period of neutrality in which government policies were neither hostile toward nor supportive of labor unions and collective bargaining, 3) a period of encouragement in which government policies support labor unions as collective bargaining agents, 4) a period of control in which government regulates labor relations. This type of chronology may be useful for describing major trends in government policies toward labor unions, but there are several problems with using this type of chronology in the present study. Of major importance in understanding the legal framework for labor relations is the role of the courts in defining and enforcing the rules of the game. Until the 1930s there were public policies affecting labor, but no government legislation directly relating to the collective bargaining process. The rules of the game for labor relations were established primarily through the evolution of that institution in the private sector and the legal precedents established by the courts through common law. The role of the courts must be examined as an independent institution which at times constrained the government and at other times sanctioned goverment policies affecting labor.

A number of writers have interpreted this legal environment in terms of the influence of economic interest groups on legislation and on the judicial process. For example, Lieberman and Gregory interpret the hostile legal environment for early unions and collective bargaining as a response to the influence of propertied interests.(1) More recently, Posner and Landes have elaborated an interest group theory of justice.(2) The problem with this interest group explanation for the legal environment of labor relations is that it does not always fit the

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facts and the writers move away from that framework at crucial points in their interpretation of changes in labor law.

There are many other competing explanations for the development of labor law in America. Different authors emphasize the importance of class conflict, race, ethnicity, and a variety of demographic and economic variables. These explanations often contain a strong element of economic determinism which precludes individual choice. Yet labor law in America reflects the choices made by judges, legislators, labor leaders, and business leaders and by the public at large in their reaction to major changes in labor law. Underlying these individual choices is an ideology that shapes each person's perspective of the legal framework for labor relations; major changes in labor law reflect important trends in ideology.

Sanford Cohen has suggested an analytical framework for labor relations law that combines the prevailing ideology and the influence of economic interest groups.(3) He maintains that major changes in labor relations law are associated with abrupt changes in both the ideological and political environment, and that the timing of these changes coincides with a dramatic failure in the functioning of the economy. S shift in either the prevailing ideology of property rights or in the effective source of political power will not bring significant change in labor law without significant disruption in the functioning of the economy; the two changes must interact and reinforce each other to result in major new laws affecting labor relations. Cohen's analytical framework goes beyond narrowly defined economic determinism, but it suffers from the same defects as that of the writers he criticizes. One can point to periods of history when both of these conditions were present but little change occurred in labor relations law, and to periods of significant change in labor law in the absence of one or both of these changes. Indeed Cohen himself identifies several periods which illustrate this – the Jacksonian period of the 1830s and 1840s, the Progressive era of the early 20th century, and the immediate post WWII period.

The fact is that we do not have an analytical framework capable of explaining the complex changes that have occurred in American labor law. In this study we have a much less ambitious goal. We first explore the political economy of labor law by tracing the major ideological trends that have influenced the attitudes of judges and politicians, as well as social attitudes

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toward labor. We then turn to a detailed analysis of major

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changes in labor law. These changes include the adoption of the criminal conspiracy doctrine, the use of injunctions and damage suits, the era of substantive due process, and the recent period of judicial abdication in labor law. While these changes in labor law overlap, they follow a roughly chronological pattern of development. In each period we attempt to show how the prevailing ideology was translated into court decisions and public policies that established the legal framework for labor relations.

While we cannot explain these changes in labor law in terms of a rigorous analytical framework such as that suggested by Sanford and Cohen, we can trace the links between ideological trends and shifts in the decisions made by the courts and the legislature. Our methodology is perhaps closest to what Murray Rothbard refers to as Praxeology.(4) We assume that individuals can perceive ends and alternative means to those ends, and will make rational choices among those alternative means. We further assume that individuals are influenced by an ideology which incorporates moral and ethical considerations in the choices that they make.

Ideology and Labor Law in Pre-Industrial America

The ideology of pre-industrial America can be traced to the major writers in classical liberal political economy: Thomas Hobbes, 1588-1679; John Locke, 1632-1704; Jean Jacques Rousseau, 1712-1778; and Edmund Burke, 1729-1797.(5) Underlying this ideology are the basic tenets of classical liberalism, i.e., the Lockean concept of natural rights and the contract theory of the state. In the 'natural order' each individual has certain 'natural rights.' He has the right to his own body and to the fruits of his own labor. When the individual applies his labor to other property he creates private property. Thus private property rights are an extension of natural rights. This bundle of indivudual property rights exists prior to the organization of individuals into society and prior to the existence of the state.

In the Lockean view, individuals enter into a fundamental contract with each other to form a civil society. In this contractarian view, the state derives its power from the will of

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individuals in the society. Individuals voluntarily agree to surrender certain rights to the state in order to secure their individual property rights. The power vested in the state exists only so long as the individuals in the society will it. When the state violates individual property rights, then those individuals have the right to withdraw their support, including the overthrow of the state through revolution. The locus of power in this contractarian view is the individual, i.e., popular sovereignty, rather than in the state.

The implications of this Lockean concept of natural rights and social contract are clear. An individual's economic rights are no different from his personal rights; indeed, they are a logical extension of personal rights. If we accept that an individual has rights to his person including freedom of expression, association, religion, etc., then we must also accept the right of the individual to apply his faculties to improve his welfare. He is then entitled to or claims property rights in the fruits of his labor. Thus the freedom to enter into a calling or trade and to own real property in the form of land, buildings, and other forms of capital is essential in the pursuit of that calling.

There are certain rules of the game that must be established to protect individual property rights, whether those rules are established by statute, i.e., written law emanating from the government, or by common law, i.e., the precedent of decisions by courts which have the force of law. Individual property rights must be defined and enforced so as to protect individual freedom. Individuals must have recourse to adjudication of disputes over property rights with reference to a rule of law which is understandable and enforceable. They must be protected from abuse of property rights, whether by other individuals or groups, by the coercive power of government, or by judges and courts which make arbitrary decisions inconsistent with a rule of law. If one individual imposed costs on others in the society through his own actions, then he should be held accountable for those actions. Where property rights are perfectly defined, such actions would not be possible, or if possible, would require full compensation by the offending individuals to the parties whose welfare is diminished by his actions. The object of a rule of law is to prevent such abuses from taking place and require just compensation when they do take place.

The assumption is that social welfare is maximized by establishing a rule of law defining and protecting individual property

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rights such that each individual is free to maximize his own welfare. There is no concept of social welfare independent of the welfare of the individuals in the society. The function of government and the legal system is not to maximize some objective social welfare criterion, e.g., economic growth, economic equality, etc. In other words, it is not an appropriate function of government to do something for individuals in the society because it is in their best interest. Rather it is up to individuals to determine what is in their best interests; the function of government and the rule of law is to make sure that they are free to pursue their self-interest from coercion from their fellow man and from the social institutions of government, courts, etc.

The object of a rule of law is an equitable society in the sense that each individual's property rights are defined, enforced, and protected. Nozick has termed this an 'entitlement theory of justice.'(6) Each individual is entitled to any property unless it can be proved that he or the people who transferred the property to him acquired it in an unethical manner.

Classical liberalism in Europe was in part a reaction to mercantilism. The political economy of mercantilism was based upon the tenet that government power should be use to maximize wealth through paternalistic state policies. Mercantilist policies in European countries resulted in a massive government bureaucracy and regulations over virtually every aspect of economic activity. The result was a concentration of power in the hands of government officials and restrictions on economic opportunities available to private individuals.

In the writings of the classical economists, and especially the work of Adam Smith, classical liberalism acquired a new meaning.(7) Smith argued that a society based upon the rule of law would be most conducive to economic growth and the accumulation of wealth. In fact, he argued that the growth of the American colonies was based, not so much on the abundance of land and other resources, but rather upon the unique set of political insititutions protecting individual property rights and limiting the power of government to intervene in the economy. Smith recognized certain limited spheres of economic activity calling for government intervention to prevent the abuse of economic power, but he was confident that a laissez faire economy would maximize the welfare of the society. Smith maintained that welfare is maximized in a

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growing economy that permits the accumulation of wealth. Yet for Smith and the classical economists, economic growth is certainly not the objective of public policies. Rather they argue that a political system based upon classical liberalism, i.e., the rule of law based upon natural rights and the social contract, is most conducive to economic growth. By eliminating government interference in a wide range of economic activities, the society could better protect individual property rights consistent with wealth maximization and economic growth. The potential conflict between government policies consistent with this laissez faire philosophy of political economy and the goal of economic growth is not spelled out, but the earlier writings of Smith suggest that he would have defended the goal of a just society even where this conflicted with the goal of economic growth. (8) The entitlements theory of justice implicit in the natural rights and social contract doctrine was fundamental; the fact that such a society would be conducive to economic growth was incidental.

The ideology of classical liberalism was the foundation for early writings on political economy in America and are embodied in the American Constitution. The Federalist Papers, written to support ratification of the Constitution, best illustrate the ideology of the Revolutionary and early national period in America. (9) In the Declaration of Independence, the English triad of life, liberty, and property was changed into life, liberty, and the pursuit of happiness:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the Pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

The individualist philosophy underlying the Constitution and the Declaration of Independence assumes that each individual is equal to all others in the political sense. No one individual may be coerced by another individual. Individuals may differ in terms of the material or psychic outcome of their actions, but such inequalities are irrelevant from a political standpoint. The only justifiable use of coercion is to prevent one individual from coercing another. The condition for equality in the political sense is a respect for the right of each individual to pursue his welfare through voluntary decisions.

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For the founding fathers, these self-evident truths provided the foundations for our political institutions. Those institutions were designed to ensure the respect for individual equality in the polity. Political force was justified against and only against those who violated the right of others to Life, Liberty and the Pursuit of Happiness.

There is no attempt in the Declaration of Independence or the Constitution to spell out the "good" in terms of an ethical or moral course of action for the society as a whole. Those documents establish a political system in which each individual is left to pursue his own welfare. Implicit is the assumption that each individual should make the most of his abilities in the pursuit of happiness. This ethical individualism or egoism is made explicit in the natural social contract doctrine developed by Locke which is the ideological foundation for our political institutions.

There are a number of assumptions underlying the individualist philosophy embodied in our political institutions. It is assumed that individuals can perceive the ends of their actions and make rational choices among alternative means to those ends. With respect to moral or ethical standards that might guide individual choice there are two alternative assumptions. The subjectivist position, which underlies most economic analysis, assumes no objective ethical or moral standard of behavior independent from the individual's own preferences. Each person's preference function constitutes what that person should or should not do. An alternative assumption begins with the proposition that an objective moral or ethical standard for behavior can be derived from the nature or essence of being a human being, both for the individual and for the society as a whole. However, that standard must be adhered to by choice in objective individualist philosophy. This presupposes that it is possible to obtain knowledge of such objective normative principles for individuals and for the society as a whole. Those principles provide the rationale upon which the natural rights social contract doctrine is grounded, i.e., the right of each individual to the pursuit of life, liberty, and happiness, as well as other rights contained in the Bill of Rights.

America's pursuit of happiness was interpreted to mean the acquisition of property. De Tocqueville captured this spirit of early America:

> In no country in the world is the love of property more

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active and anxious than in the United States; nowhere does the majority display less inclination for those principles which threaten to alter, in whatever manner, the laws of property.(10)

James Madison perceived property in very broad terms:

> This term (property) in its particular application means that domain which one man claims and exercises over the external things of the world, in exclusion of every other individual. In its larger and juster meaning, it embraces everything to which a man may attach a value and have a right; and which leaves to everyone else the like advantage. In the former sense, a man's land, or merchandise, or money, is called his property. In the latter sense, a man has a property in his opinions and the free communication of them. He has a property of peculiar value in his religious opinions, and in the profession and practise dictated by them. He has property very dear to him in the safety and liberty of his person. He has an equal property in the free use of his faculties, and free choice of the objects on which to employ them. In a word, as a man is said to have right to his property, he may be equally said to have a property in his rights.(11)

Americans referred to Blackstone for a concept of property that did not even require society's recognition of those property rights. For Blackstone property rights are vested in the individual by the immutable laws of nature before governments are created. Thus property rights existed before the Constitution of the United States, before the state constitutions, and before any attempt to list those rights as embodied in the Declaration of Independence or the Bill of rights. Blackstone argued that the law "will not authorize the least violation of it; no, not even for the general good of the whole community ... The right of property is founded in the law of nature, and is antecedent to all civil regulations."(12)

In the Constitution the definition of individual property rights was embodied in the 5th Amendment, that a person shall not be deprived of "life, liberty or property without due process of law." The origins of this due process clause can be traced back to the Magna Charta accepted by King John in 1215. The Magna Charta confirmed that no freeman "shall be arrested, or detained in person, or deprived of his freehold, or outlawed, or banished, or in any way molested ... unless

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by the lawful judgment of his peers and by the law of the land." State constitutions contained either a clause referring to the 'law of the land' or a due process clause similar to that found in the federal Constitution. Due process and law of the land both had the same meaning; they required that certain processes and procedures be followed in order to protect individual rights. In the words of Daniel Webster:

> By the law of the land is most clearly intended the general law, a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is, that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. Everything which may pass under the form of an enactment, is not, therefore, to be considered the law of the land.(13)

In the early national period there was no need for the courts to refer to specific constitutional guarantees such as the due process clause in order to find against a government action in violation of individual property rights. The courts often referred to the natural law doctrine that forbids the legislature from imposing arbitrary restrictions on a person's fundamental and inalienable rights. Only later would the courts become hesitant in referring to unwritten laws based upon a doctrine of natural rights and social compact and turn to written law as contained in the due process clause or law of the land clause of federal or state constitutions. In other words, the natural law and social compact theory was accepted by Americans and applied by the courts before these concepts were adopted as formal constitutional provisions. The origin of these concepts can be traced to early writings on political economy and to British common law traditions carried over in the American common law.

Bernard Bailyn has noted that the dominant political ideology among early Americans was predicated on fear and distrust of government.(14) Americans attempted to preserve their natural rights through both common law traditions and specific constitutional restraints on the power of government. Our constitutional law can be understood as limitation on the power of the state to interfere with individual property rights. In addition to the due process clause the constitution specifically prohibits retroactive laws and requires that laws affecting private property, such as laws of taxation, be general and

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uniform. The contract clause places limitations on the power of government to interfere with contracts between the state and the individual as well as between private individuals. The commerce clause restricts federal government regulation of commerce to interstate commerce. The Separation of Powers doctrine distinguishes between the legislative function and the judicial function, limiting the power of the legislature to interfere in the determination of individual cases.

The distinction between the legislative and judicial branch of government was also interpreted to preclude the courts from 'political' activity. Adjudication was to be non-political, involving the determination of the rights of individual parties before a court. This legalistic mentality was designed to create a politically neutral system of law. The objective was a society governed by the rule of law, a government of laws and not men.

Early Supreme Court decisions established both the neutrality of the courts and the supremacy of the court in adjudicating constitutional issues. In the most famous of these cases, Marbury v. Madison (1803) Chief Justice John Marshall asserted the court's authority as guardian of the Constitution and tribunal of last resort.(15) The Supreme Court's early decisions interpreted the Constitution so as to define and protect individual property rights against the power of the state. In Fletcher v. Peck (Yazoo Land Case. 1819), the court ruled that the government could not interfere with the right of contract between the state and private individuals as well as between private individuals under the Contract Clause.(16) In Sturges v. Crowneshield (1819) the Court negated a law giving relief to debtors on the grounds that such relief impaired the obligation of contract.(17) The Court invoked the Commerce Clause to restrict the power of state governments to interfere in interstate commerce. In Charles River Bridge v. Warren Bridge (1837) the Court ruled that state charters did not give the recipients a monopoly power in the provision of a service in interstate commerce.(18) In Gibbons v. Ogden (1824) the Court declared that state statutes granting a monopoly to steamship companies were unconstitutional.(19)

While early Americans were committed to the ideal of equality of opportunity, they opposed any attempt to use the power of government to achieve substantive equality. Morton J. Horwitz describes this ideology in "The Legacy of 1776 in Legal and Economic Thought":

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> As part of this abstract commitment to the ideal of equality of opportunity, there remained an almost paranoid fear of the threat of substantive equality. Nowhere more often than in this most politically democratic country in the world did the political elite express the fear that equality of opportunity was a constant danger of being overwhelmed by the leveling impulse. No theme is more pervasive in the political thought of America than the constant fear of redistribution of wealth or, as it was called, of tyranny of the majority. The entire structure of legal and political ideas and institutions that emerged from the American Revolution was devoted to erecting barriers that would prevent the redistribution of wealth and would assure that accumulations of wealth by the shrewd, the calculating, the ambitious and the able would be protected. But equality of opportunity meant in practice that the inevitable resulting inequalities would be protected and perpetuated by law. (20)

Justice Kent explicitly recognized that a legal system that protected individual proterty rights could not maintain a state of equality as to property ownership. (21) The function of the law in protecting private proterty meant the positive assertion of inequality.

Judicial process was based upon the ideal of equality of opportunity in contrast to substantive equality. For example, the adjudication of contract law sanctioned any contractual arrangement which followed proscribed procedures, regardless of the outcome to the individual parties involved. In other words, the courts did not attempt to judge the outcome of a contractual arrangement with reference to some ideal of social justice. Rather they judged whether the means, in this case, the definition and enforcement of individual rights to private property and contractual arrangements, followed legal standards and procedures.

Early labor law reflected this ideology of individualism in which a person's actions are judged to be legally permissible, not by reference to whether they yield benefits or losses to the society, but rather whether they violate the rights of others in the society. The purpose of the law was to protect and preserve the rights of individuals to engage in noncoercive actions; governments, which administer and execute the law, were bound by this same limitation. We also see evidence of

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a contradictory ideology, i.e., collectivism, in early labor law. Legislators often referred to improving public welfare and Justices often reached decisions with reference to social welfare as opposed to the rights of the individual parties. When an individualistic political and legal framework was combined with an altruistic moral and ethical climate the outcome was often infringement of individual rights on the grounds that this maximized social welfare in the collectivist sense. Yet this should not obscure the dominant ideology which underlies our early labor law.

As we explore labor law in pre-industrial America we will find the dominant influence to be a natural rights social contract view of the just society. In both legislative intent and judicial interpretation we find a consistent effort to more clearly define and enforce individual rights, including economic rights, as well as personal and political liberties. The dominant ideology identified the welfare and happiness of the society with that of the individuals in the society. Maximizing happiness required a legal framework which protected the rights of each individual to pursue life, liberty, and property. Implicit in this political individualism was a moral or ethical individualism, that is, the view that everyone should pursue personal happiness in life as a matter of moral principle and that this would maximize the welfare of the society as a whole.

Clearly the legal environment in this era of the criminal conspiracy doctrine was not favorable to the organization of workers into unions for purposes of bargaining with their employers. Some labor historians argue that this hostile legal environment reflected the prejudices and biases of judges against labor. However, the legal decisions affecting labor unions in this early period reflected more than simply class interest. These decisions emerged out of a common law tradition that viewed any combination or restraint of trade as illegal. The courts were concerned that union actions might damage the welfare of employers without any perceived benefit to the union, and impose costs on the society at large through the restraint of trade. The courts were also concerned with the violation of rights of the individual non-union employee by labor unions. The object of these decisions was a protection of the freedom of individual workers to enter an occupation. In a later period the Supreme Court would deal with these issues in a more explicit manner. In this early period these

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issues were implicit in the applicaiton of the criminal conspiracy doctrine.

Underlying these court decisions was a laissez faire philosophy; judges perceived a pre-industrial society composed of small businesses operating in competitive product and labor markets. Any concentrarion of power in these markets, whether of labor, business, or government, could result in the abuse of that power in restraint of trade. The courts' challenge of labor unions was paralleled by court decisions challenging the concentration and abuse of power by business and government. The object of these decisions was a clear definition and enforement of private property rights consistent with a laissez faire economy.

Ideology and Labor Law during the Industrial Revolution

The fundamental presuppositions of ideology in the pre-industrial society based upon natural rights and the social contract were discarded during the Industrial Revolution. In mid-19th century Jeremy Bentham, John Stuart Mill and other utilitarian philosophers provided an ideology more in tune with the rapid social and economic changes that accompanied the industrial revolution in America.(22)

The previous generation identified justice with equality of opportunity and with procedural safeguards for individual property rights, i.e., an entitlement theory of justice. If individuals acquired property by lawful means, the outcome was just even though equality of opportunity resulted in substantial inequalities in the distribution of property. The only criterion for intervening in the individual's exercise of property rights was when property laws were violated, i.e., when individuals acquired property through illegal or fraudulent means.(23)

Utilitarianism established a new rationale for the just society. Among the disciples of utilitarianism and more recently in the writing of Rawls this rationale is to maximize the total welfare or utility of the society.(24) If we assume that there is an objective criterion for measuring welfare, then we can judge a specific case with reference to this objective criterion of welfare. For Benthem and other utilitarians the calculus of pleasure and pain could be refined to mathematical precision as a tool for adjudicating cases in order to maximize total welfare. The basic presupposition of utilitarianism, maximizing

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the greatest good for the greatest number, introduced an entirely new concept of the just society.

There were several other ideological developments that reinforced utilitarianism. The philosophy of empiricism predated the development of utilitarianism. Empiricism is identified with earlier writings in political economy, most notably those of David Hume.(25) Empiricism provided the utilitarians with a philosophical rationale for a scientific approach to human affairs. If we assume that knowledge is what is directly sensible and measurable we may proceed to develop a decision criterion consistent with a utilitarian ideology. This is precisely what Bentham did in prescribing the calculus of pleasure and pain as a decision rule for legislative and judicial decisons. More broadly, empiricism provides a rationale for determining the greatest good for the greatest number in a democratic society. While happiness is subjective, we can infer happiness by observing individual choices in the political system as well as the market system. A majority vote rule in a democratic society will lead, by definition, to the greatest good for the greatest number. Since empiricism limits knowledge to what is observable and measurable, utilitarianism is biased toward material or economic wellbeing.

Utilitarianism also provided a link with the advances occurring in the physical and natural sciences. Scientism or the application of the laws of science to social phenomena was a goal of political economy. Bentham's utilitarianism provided the foundations for this new 'science' of welfare economics. In the hands of Pigou and 'modern' welfare economists, this calculus would be cloaked in the scientism of welfare economics.(26) If we assume diminishing marginal utility then a redistribution of wealth and income from the rich to the poor will increase total utility. Equality of condition replaces equality of opportunity as the criterion for a just society. We must judge the outcome of a particular case, not in terms of the property rights of the individual parties, consistent with an entitlement theory of justice; rather we must refer to an objective criterion based upon maximizing the welfare of the society as a whole. Recently Rawls has provided a decision rule for this theory of justice: in addition to equality of opportunity we must also permit inequality in outcome only when the result is to improve the lot of the least advantaged members of the society.(27) Nineteenth century Americans did not have such

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a precise decision rule for adjudicating disputes based upon the utilitarian philosophy, but they certainly understood the implications of the change from an entitlement theory of justice to a theory of justice based upon equality of condition.(28)

The culmination of these ideological trends in the modern welfare state and modern jurisprudence could not have been foreseen by Bentham and the utilitarians. Nor could they have percieved the failings and contradictions of a philosophy based upon measuring the unmeasurable (utility) and comparing the incomparable (interpersonal utility). Bentham's utilitarian philosophy was welcomed with open arms by mid-19th century Americans eager for a 'scientific' foundation for political economy in an era of rapid economic growth.

A utilitarian ideology might be interpreted in two different ways with respect to political theory. The primary concern in utilitarian ideology is with social welfare, defined as the greatest good for the greatest number. One interpretation of this utilitarian ideology is consistent with a political theory emphasizing the protection of individual rights. For Adam Smith a political system that defined and enforced individual property rights and limited the power of government would maximize social welfare. Each individual in maximizing his own welfare would maximize the welfare of the society as a whole. This did not preclude altruistic behavior, but Smith was suspicious of arguments for social welfare on altruistic grounds. "I have never known much good done by those who affected to trade for the public good."(29)

John Stuart Mill, writing a century later, incorporated an individualistic political theory into the utilitarian ideology. He defined the role of the government in the following terms:

> The sole end for which mankind are warranted individually or collectively, in interfering with the liberty of action of any of their number is self protection ... The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. The only part of the conduct of any one, for which he is amenable to the society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and

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mind, the individual is sovereign. (30)

While Mill's views, like those of Smith, appear to be consistent with an individualist ideology based upon natural rights, we also see the seeds of an alternative political theory based upon the ideology of utilitariansim. Mill could insist upon political individualism on the grounds that this enhanced social progress. But one might accept a political theory based upon maximizing social progress and yet reject the assumption that individual welfare maximization is consistent with social welfare maximizaion. At issue here is the concept of a social welfare function. The classical economists identified social welfare with the welfare of the individuals in the society. In Mill the concept of a social welfare function acquired a new meaning in the guise of social progress, i.e., an abstract objective welfare function to be maximized in the utilitarian sense of the greatest good for the greatest number. This idea of social welfare as an abstract objective concept led to a political theory rejecting the natural rights doctrine and the ethics of individual welfare maximization.

In these 19th century writings in political economy we see an attempt to define a social welfare function independent of the welfare of individuals. These writers do not begin with the presupposition of classical liberalism based upon an entitlements theory of justice, rather they substitute an abstract theory of justice, of enhancing the wealth of the community, or an egalitarian society. This implies social goals, such as economic growth or economic equality which supercede the rights of individuals and which can be achieved by government intervention. A society based upon a rule of law protecting individual property rights is no longer considered the means to a just society. Conflicts between such laissez faire institutions must yield to governmental decision making designed to maximize an objective social welfare function. The criterion of court decisions is no longer the property rights of individuals, but an objective social welfare function, however that is perceived by the justices. The result of these presuppositions is that rule by man replaces the rule of law. (31)

We also see in Mill the seeds of a distinction that acquires greater significance for the American legal system in the 20th century. Mill defended some of the same rights as Locke, but on a different premise. For Locke individual liberties should be protected on the grounds that they are natural and inalien-

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able rights of individuals as human beings. Mill argued for the protection of these same rights on the grounds that this will promote the general welfare. He defended the right to freedom of thought and speech on the grounds that the free flow of information would promote the discovery of truth. The free flow of ideas protected by civil or political rights was considered essential to the functioning of a free and democratic society. In contrast Mill supported government infringement of economic freedom where this promoted the general welfare, e.g., government regulation of natural monopolies.(32) Implicit in this distinction is a value judgment regarding the relative importance of personal or political liberties and economic liberties. When Mill condoned government intervention in economic affairs, he implied that economic liberties were on a lower level of importance than personal and political liberties. This distinction becomes explicit in the U.S. beginning in the 1930s when the courts more vigorously enforce personal and political liberties, but set lower standards for judicial review of legislation infringing upon economic liberties.(33)

Once we specify a social welfare function independent of the welfare of the individuals in the society we provide the ideological foundation for collectivism. In collectivism as opposed to individualism the primary concern is with social progress, however that is defined. The criterion for the law in a collectivist society may be based upon the utilitarian principle of the greatest number; however in this case, maximizing social welfare may conflict with individual welfare. If a particular law or judicial decision increases social welfare in this utilitarian sense, this justifies infringement of individual rights in a collectivist political system.

While elements of collectivism were evident in pre-industrial America, it is during the industrial revolution that a collectivist political system begins to dominate. Legislation is passed involving government infringement of individual liberties on the grounds of maximizing social progress. Judicial decisions shift from the protection of individual rights to positivist law designed to maximize some social objective. Democracy legitimizes the incursions of the state in economic affairs on the utilitarian grounds that this reflects a majority vote rule, and the courts sanction this expansion of government as a legitimate exercise of the "police" powers of the state. We should emphasize that the legislators and judges responsible for the erosion

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of individual liberty viewed their decisions as ethically and morally responsible. Legislation and judicial reasoning was cloaked in the moral and ethical garb of altruism with reference to social welfare or social progress. However, the outcome was an increasingly collectivist society in which the rights of individuals were sacrificed for the "good" of the community. A laissez faire economy began to look more like a collectivist state.

The Jacksonian period witnessed the logical extension of utilitarian philosophy to egalitarian political economy. The just society was defined, not in terms of equality of opportunity, but rather inequality of condition. Thomas Skidmore in his "Plan for Equalizing Property" redefines natural rights from an entitlement to the fruits of one's labor, to an equal share in all property:

> Man's natural right to an equal portion of property is indisputable. His artificial right or right in society, is not less so. For it is not to be said that any power has any right to make our artificial rights unequal any more than it has to make our natural rights unequal. And inasmuch as a man in a state of nature would have a right to resist, even in the extremity of death, his fellow or his fellows, whatever might be their number, who should undertake to give him less of the property common to all than they take each to themselves, so also has man now, in society, the same right to resist a similar wrong done him. Thus today, if property has been made equal among all present, right would have taken place among them.(34)

It should not be surprising that an egalitarian concept of a just society should emerge in the Jacksonian period. That period was not only one of rapid economic growth; that growth was accompanied by greater inequalities in the distribution of income and wealth. By the second half of the 19th century a plateau of inequality was established with a small group of very wealthy, a large middle class, and a significant number of Americans living in what Henry George referred to as Vice and Misery. Henry George was the first political economist in America to call for a massive redistribution of wealth. He dedicated *Progress and Poverty* to "Those Who, seeing the Vice and Misery that spring from the Unequal Distribution of Wealth and Privilege, Feel the Possibility of a Higher Social State, and Would Strive for its Attainment."(35) In the era of the

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Robber Barons the wealthy such as Carnegie, Morgan and Rockefeller became the targets of social reform. The so-called robber barons were perceived as wielding monopoly power to generate monopoly profits and their accumulation of wealth was seen as exploitation of the laboring classes. Labor groups, farmers, and other interest groups who felt disenfranchised demanded public policies to curb and regulate monopoly power and to redistribute income and wealth from the rich to the poor. The writings of Henry George and other social reformers began to influence legislation designed to achieve a more egalitarian society.(36)

The impact of a utilitarian ideology was most evident in American jurisprudence. Gradually references to natural rights and the social compact disappeared from judicial decisions to be replaced by explicit references to federal and state statutes. Judges were increasingly uncomfortable with doctrines based upon unwritten law or law of the land which assumed the existence of individual property rights prior to the organization of individuals into a civil society. Increasingly, legal opinions referred to man-made law as embodied in the written statutes of federal and state law. The codification movement emerged in mid-19th century as an attempt to replace the entire body of common law with a codified or written law similar to the Roman Codes and Napoleonic Codes. Jeremy Bentham is reported to have offered his services to President Madison to codify the entire body of American law based upon utilitarian principles of jurisprudence. Needless to say, the codification movement was opposed by those in the legal profession committed to the preservation of a common law system.(37)

The latter group perceived the dangers of a codification of the law based upon equity criteria such as that provided by the utilitarians. They wished to preserve the distinction between the common law and equity. One might argue that defense of the common law was self-serving on the part of the legal profession with a vested interest in the status quo. However, a fairer interpretation of their legal writings shows a desire to preserve an independent judiciary, preserving not the status quo, but the individual property rights protected by centuries of common law tradition. The opponents of codifidation recognized that jurisprudence based upon equity criteria would place the courts in the political arena, blurring the distinction between adjudication and legislation and perhaps endangering

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the precedence of judicial review. David Dudley Field, the leader of the codification movement succeeded in writing civil codes which were enacted in twenty four states, and criminal codes that were enacted in eighteen.(38) These codes did not bring radical changes in the law and they did not undermine the central role of common law in American jurisprudence; the codes were probably more important in giving a unique American and nationalistic flavor to written law. Utilitarian ideology did not bring a revolutionary change in American law through codification, but it did bring change through a long evolutionary process that can be traced back to the early 19th century.

The courts' interpretation of substantive due process placed some constraints on the power of government to infringe upon economic liberty in the late 19th and early 20th centuries. Surprisingly, the role of the court in this era of substantive due process has been criticized both by writers who support constitutional limits on the expansion of government power and by writers sympathetic to a ubiquitous role for government in the economy. The former point to this period as marking the transition from a laissez faire economy in which incentives were biased toward productive activity increasing total wealth, toward a society in which greater incentives existed for transfer activities, and especially transfers of wealth through the public sector.(39) They point to the rapid growth of government and the more ubiquitous role of government in economic activity. They maintain that the courts reinterpretation of the due process clause was crucial in establishing a legal environment within which this expansion in government would take place.

One approach in analyzing the effectiveness of the courts in coping with this mass of government legislation is to calculate the amount of legislation invalidated. Between 1868 and 1912 the Supreme Court struck down a little more than 6% of the cases it heard; from 1913 to 1920 the percentage rose to approximately 7%; and from 1920 to 1928, to 28%.(40) While the 1920s appears to be the high point in the Supreme Court's application of substantive due process to invalidate legislation, its role in the prior period is not insignificant. State courts also negated a great deal of legislation infringing upon individual liberty and property, based upon substantive due process.(41)

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A survey of these cases reveals a wide range of economic liberties brought under the protection of substantive due process. The legislation invalidated by the Supreme Court included artificial barriers to entry into a business created by government, laws prohibiting the operation of a particular business, regulations over prices, and regulations of the wages, hours, and working condiditions for labor.(42) State courts negated a wide range of legislation including:

1) laws prohibiting the manufacture of products in one's home;
2) laws forbidding business from keeping their shops open on Sunday;
3) laws forbidding workers from working in excess of eight hours per day;
4) laws forbidding employers from firing workers who joined or remained in unions;
5) laws restricting entry into an occupation.(43)

Those who are sympathetic to an expanded role for government in economic activity criticize the substantive due process justices on the grounds that their decisions were arbitrary and capricious. They maintain that the interpretation of the 'rule of reason' reflected the influence of specific interest groups and the inherent biases of a court drawn from a legal profession representing propertied interests:

> The question of reasonableness or arbitrariness of a law could not be settled by reference to any specific constitutional provision or any absolute principle of law. A reasonable law was one that seemed sensible, plausible, and intelligent to the judges who passed upon it.
>
> What constituted sensible, plausible, and intelligent public policy, however, is largely a matter of the individual's economic and social philosophy – his standard of values, When the court applied the test of reasonableness to legislation, therefore, it measured the law against its own economic and social attitudes. If in the light of these attitudes the law seemed intelligent, the justices upheld it; if not, they declared it unreasonable, arbitrary, and a violation of due process of law.(44)

A survey of substantive due process with reference to labor legislation reveals that substantive due process justices believed that economic liberties should be protected under the fifth and fourteenth amendments. They were willing to invoke

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substantive due process to negate legislative infringing on individuals' right to enter an occupation, and the freedom of employers and employees to contract for labor services. These economic liberties were not absolute, but before the state could infringe upon those liberties it had to show that the ends were justified and that the legislation was a reasonable means to that end. This required that the courts analyze the economic impact of the law and attempt to assess the effectiveness of that legislation in achieving those objectives. The criterion for that evaluation was the reasonableness of the legislation in the eyes of the court. The "rule of reason" left a wide scope for judicial interpretation depending upon the point of view of the justices at any point in time.

It should not be surprising that the interpretation of the 'reasonableness' of legislation changed over time with changes in the composition of the court. Yet there was also a continuity in the protection of economic liberties under substantive due process, and links to an earlier tradition in common law protecting economic liberty and property rights. That tradition was based upon a philosophy of laissez faire which Professor Aaron Director has described in the following terms:

> Laissez faire has never been more than a slogan in defense of the proposition that every extension of state activity should be examined under a presumption of error. The main condition of economic liberalism has always assumed a well established system of law and order designed to harness self-interest to serve the welfare of all. The institution of private property – at least since Hume – has always been defended on this ground. And, wherever it seemed that this institution might be modified without subverting the general framework of a competitive society, the tradition has shown a readiness – perhaps exaggerated – to modify this basic institution. But the tradition goes much beyond this. It has always assumed that there were some economic results which cannot be attained at all or attained only in appropriate amounts if left to the feee market. (45)

In the context of this philosophy, the courts in the era of substantive due process performed effectively as an independent judiciary protecting economic liberty under the constitution. Beginning in the 1880s and extending to 1932, civil suits for injunctions and damages were applied to labor unions.

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A survey of injunctions and damage suits against unions dispels several myths which have become attached to these cases. First is the myth that injunctions and damage suits simply replaced the criminal conspiracy doctrine as the preferred technique of business interests to suppress union organization. Whether or not the criminal conspiracy doctrine was ever applied against union organization per se, clearly by the period that injunctions and damage suits were applied, the right of workers to voluntarily organize into unions and to engage in peaceful strikes and other concerted action to improve their wages and working conditions was universally recognized by the courts. Injunctions and damage suits were brought against labor unions for unlawful acts that infringed upon the rights of others, i.e., employers, non-union employees, and in some cases, their own members. The diversity of cases and wide range of issues in these cases refutes the naive view that they represented class conflict between labor and capital. Even though the majority of cases were brought by employers against unions, the parties damaged by union actions in these cases were most often other employees.

Secondly, we can dispel the myth that the courts' decisions in these cases reflected not only the dominant influence of business interests, but also the biases of justices drawn from a wealthy class opposed to unions. The decisions and opinions rendered in these cases reveal an acceptance by the courts of the rights of workers to voluntarily associate into unions and to engage in peaceful lawful actions to improve their welfare. It was the threat or use of unlawful actions and, in many cases, violent actions of the union that triggered efforts by employers and by employees to seek relief through injunctions and damage suits. If anything, the courts bent over backwards to protect the rights of unionists and in some states such as New York the courts granted the union special privileges and immunities that were not available to other organizations.

Finally, we can dispel the myth that the injunction and damage suit were archaic legal principles dragged out by the courts solely for the purpose of suppressing unions. The courts have been accused of abusing their equity powers through careless and arbitrary decisions enjoining strikes, pickets, and boycotts. The injunction and damage suit were based upon principles of equity with precedents extending back to the 14th century. We find that American courts applied these

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principles of equity in labor disputes over the period from 1880 to 1932 in a manner which reflected faithfully the principles and practices of equity. Far from abusing their equity power, the courts used those powers with care so as to protect the rights of union members as well as employers and non-union employees. Invariably these cases involved unlawful acts of labor unions including violence, vandalism, property destruction and intimidation. In these cases the judges went as far as they could to respect the rights of organized labor, while defending the rights of non-union workers, employers, and investors.

Ideology and Labor Law in a Mature Economy

The major ideological influence in 20th century America has been the philosophy of pragmatism. This philosophy acquired a uniquely American flavor in the writings of Charles Peirce, William James, and James Dewey.(46) The basic presupposition of the pragmatist philosophy is that there are no moral and political absolutes. The truth of an idea or belief consists in its applicability – if it is useful in achieving a given end, then it is considered true or sound. Within any given community at a given point in time some ideas are considered acceptable to the members of the community, and that is the only standard of truth. For example, in the early 20th century monetary theories of aggregate economic activity were rather universally accepted by economists. When John Maynard Keynes published the General Theory of Employment, Interest and Money in the 1930s, he introduced what came to be referred to as the Keynesian theory of aggregate economic activity. In the Keynesian theory monetary variables were relegated to secondary important, and more 'hard line' Keynesians rejected money altogether as a significant determinant of the level of aggregate economic activity. After WWII a group of monetarists led by Milton Friedman built upon the earlier writings to develop a monetary theory. Today there are few hard line Keynesians left who would reject the importance of money as an important determinant of aggregate economic activity. According to pragmatic philosophy, the soundness of the ideas of monetary economics depends upon the visitudes of these ideas at the hands of the economics profession, rather than upon any absolute standard of soundness or truthfulness of the ideas.

In terms of political theory a pragmatic philosophy provides the basis for a sort of democratic subjectivity. The individual's

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subjective evaluation of his own welfare, which underlies the natural law doctrine, is replaced by a collective intersubjectivity. In a democratic society ethical and political truth emerges from some group decision rule such as majority vote. If the majority of people agree to a proposition, then it should work well enough. There are no absolutes of moral orpolitical truth; indeed, adherence to such absolutes gets in the way of group welfare in the pragmatic sense.

In the dominant ideology of 20th century America pragmatic philosophy is wedded to empiricism and utilitariansim. The knowable is what can be observed and measured with the senses. The behavioral sciences are enlisted to observe, experiment, measure, and generate "scientific" knowledge as a basis for controlling and manipulating human behavior in order to improve social welfare. The latter is defined in utilitarian terms as the greatest good for the greatest number. The market place provides a laboratory to observe people's choices in order to maximize economic welfare. The democratic process based upon majority vote rule provides a laboratory for measuring political preferences. While welfare is based upon a collective intersubjectivity, the focus on the observable, and measurable biases choices toward material or economic goods. Those goods may be provided through the market place or through the public sector. In the latter case the behavioral sciences provide a measure of the benefits and costs of government action and the democratic process assures that welfare is maximized in terms of utilitarian criteria. The result is a collectivist utilitarianism in contrast to the individualist utilitariansim of an earlier era.

This brief discussion of course simplifies the concept of collective utilitarianism. There are many different varieties of utilitariansim in modern philosophy. In the original hedonistic utilitarianism Bentham proposed a measurement of the happiness of the greatest number by aggregating the degree of pleasure in the community. Some utilitarians continue to argue for a measurable material indication of wellbeing, while others would leave the calculation of the benefits to subjective determination. Other utilitarians would leave the good or happy to be determined by common intuition based upon the opinion of the majority in the society.

Utilitariansim assumes that there is some collective or group whose welfare is to be maximized, but there are wide differ-

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ences in the specification of the relevant group. Some would refer to a community or nation, while others include all mankind in a worldwide community. While most utilitarians refer to mankind, some would include lower animals.

There are also different types of collectivism. Normative collectivism assumes a moral or ethical value in the pursuit of the welfare of the relevant community. Determinist collectivism views the outcome of the welfare in the community as an inevitable historical result, whether by evolution or revolution. Collectivism may involve democratic process such as majority vote rule or more hierarchical decision processes as in socialist societies.

The relationship of the individual to the group differs in various types of collectivism. In one extreme form of collectivism the individual is defined entirely in terms of his relationship to the group. The individual is defined as an organic part of the collectivity incapable of independent thought or decision. Alternatively, we may assume that individuals are capable of independent thought and action. Only then can collectivism take on normative properties in arguing that individuals should pursue the common welfare and the institutions of the society should function so as to maximize social welfare.

Despite these differences we can identify common features in all forms of collective utilitariansim. First, we assume an objective welfare function, independent of the welfare of the individuals within the society. Second, we make the normative assumption that maximizing that social welfare function will achieve the greatest good for the greatest number, however that is measured. The preferences of each individual are weighted equally in assessing the greatest good for the greatest number. Finally, we assume that there are no absolutes in the sense of moral, ethical, or political principles that would take precedence over the decision rule to achieve the greatest good for the greatest number. The measurement of the good is entirely in terms of the consequences of actions for social welfare; there are no intrinsic values in various courses of action.

It is important to distinguish this collective utilitarianism from the individualistic utilitarianism referred to earlier. In the latter, each individual in maximizing his own happiness, is assumed to maximize the welfare of the society as a whole. This is collectivist to the extent that one argues that social institutions such as property rights and limited government

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should be established to permit individuals to pursue their individual happiness on the grounds that this will achieve the optimum social welfare. In contrast, collective utilitariansim assumes an objective welfare function independent of the welfare of the individuals in the society. Maximizing social welfare in collective utilitariansim can and should involve actions by the society to achieve the greatest good for the greatest number even when the welfare of some individuals is diminished in the process.(47)

The triumph of collective utilitarianism is achieved in the New Deal policies of the 1930s. This is not to deny the links between the New Deal and the expansion of government power earlier in our history, especially in the Populist and Progressive Eras. However, the New Deal represents a watershed of change in our institutional framework and underlying this is the acceptance of collective utilitarianism as the ideological foundation for our political institutions. This ideology is perhaps best expressed in the inaugural address of President Roosevelt in 1936:

> Instinctively, we recognized a deeper need – the need to find through government the instrument of our united purpose to solve for the individual the ever-rising problems of a complex civilization. Repeated attempts at their solution without the aid of government had left us baffled and bewildered. For without that aid, we had been unable to create those moral controls over the services of science which are necessary to make science a more useful servant instead of a ruthless master of mankind. To do this we know that we must find practical controls over blind economic forces and blindly selfish men.(48)

The decade of the Great Depression marks a watershed of change in the legal framework for labor relations in America. Up to that point it is fair to describe public policies as establishing the rules of the game for collective bargaining by defining the rights and obligations of the parties to a collective bargaining agreement. The Norris LaGuardia Act. passed in 1932, outlawed employment contracts which required an employee to agree not to affiliate with a labor union as a condition of employment. The purpose of that act was to protect the rights of individual employees to enter into voluntary association through unions to improve their wages and terms of employment. However, the success or failure of the union

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in achieving these ends depended upon its bargaining power vis-a-vis employers in the private sector. In this sense Norris LaGuradia was consistent with a laissez faire philosophy which relies on decision making in a market system based upon private enterprise to determine the wage and employment conditions in the society. Public policies at that point were focused upon the procedures of collective bargaining, i.e., their conformity to law, rather than on the outcome of collective bargaining agreements, i.e., the impact on the welfare of labor or management.

The National Labor Relations Act passed in 1934 marks a fundamental change in the role of government in collective bargaining. The role of government shifted from a passive one of setting the rules of the game for collective bargaining to an active role supporting and promoting collective bargaining as the institution of choice in labor relations. This statement of purpose in public policy is contained in the preamble of the National Labor Relations Act:

> ... the purpose of the law is to promote the orderly and peaceful recognition of unions and use of collective bargaining as a means for establishing terms and conditions of employment.

With this act the role of government shifted to that of an active participant in labor relations, profoundly affecting the outcome of the collective bargaining process. This dramatic shift in public policies is usually identified with the crisis of the Great Depression and the resulting political pressure on Congress to do something to improve the plight of labor. Yet that change must be viewed in the broader perspective of ideological change in American history. For the most part government policy up to that point had been neutral with respect to labor, leaving the determination of wages, hours, working conditions, etc. up to the market system and the bargaining power of labor vis-a-vis management. We can point to government regulations in labor markets in earlier periods, but even these policies were circumscribed by the courts' interpretation of substantive due process. Most important, the collective bargaining process itself, which is the basis for labor relations between unions and management, was left to market forces. In the 1930s a new labor policy emerged in which government policies actively supported labor unions and collective bargaining in labor relations. The government also

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intervened extensively to regulate wages, hours, and working conditions. Judicial abdication left labor markets as well as other economic activity open to an expanded role for government even when this infringed upon economic liberties.

The expansion of government's role in economic activity has often come at the expense of individual liberty. This trend toward collective action has been justified in terms of the utilitarian philosophy of the greatest good for the greatest number. In the case of collective goods, it is argued that government coercion at the expense of individual liberty is essential to achieve an optimum welfare.(49) For collective goods, increased consumption of the good does not diminish its value to others in the society, and it is impossible to exclude some individuals from benefitting from the good when it is supplied to others. There is little incentive for individuals to provide the good through the private sector because of the properties of indivisibility and non-exclusivity. Unless the benefits of the good exceed the costs for a particular individual or group, the good will not be provided or will be provided at less than a socially optimum level. On utilitarian grounds then the society is justified in offering the good through the public sector and coercing all in the society to support the activity in order to overcome this free rider problem and maximize social welfare. When offered through a democratically elected government this argument acquires moral justification in Western political thought for the inherently coercive power that governments exercise through law. In the extreme majoritarian view of democracy, this rationale justifies virtually any action the government chooses to take in the public interest, regardless of its impact on individual rights or the rights of minorities. Certainly the Supreme Court in the 1930s did not sanction such an extreme majoritarian philosophy, but they did change the rules of the game in such a way that with few exceptions economic liberties (as opposed to personal liberties) were no longer protected from government encroachment.

The expansion in the power of government during the Great Depression and in following decades, and the change in the rules of the game that permitted this change in our institutional framework have been challenged by the defenders of a classical liberal philosophy. Modern libertarian writers challenged the philosophical foundations of collectivist political economy.

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Utilitariansim, especially in the extreme form of majoritarianism, ignores the existence of individual rights. Social welfare is defined entirely in collectivist terms as an abstract collectivist goal independent of the rights and welfare of individuals in the society. Writers such as Friedman, Hayek, and Buchanan, reject the presuppositions of a collectivist political economy; they reject the concept of a social welfare function as meaningless, arguing that social welfare cannot be distinguished from the welfare of individuals within the society.(50) Further, they have amplified the concept of individual rights based upon the Lockean presuppositions of natural rights and the social contract. Individuals are born with inalienable rights that exist independent of social institutions; in that sense there is no such thing as social or collective rights except as they derive from individual rights. Given the existence of individual rights, each person has a moral right to do anything that he chooses, except when his actions infringe upon the rights of others. These individual rights are violated when a person is denied the exclusive possession and control of himself or the fruits of his labor against his will. Such violation occurs through acts of aggression, i.e., by the initiation of physical force aginst person or property, threats to initiate such force, theft, fraud, breach of contract, and engaging in activities which involve a "high risk" that the person or property of another will be interfered with in any of these ways. When an individual is wronged in any of these ways, but only in that condition, he has a moral right to respond with force in defense of his person or property. The use of force or coercion in any other circumstances is an act of aggression and is morally wrong. When these moral rights are codified with law, they also become legal rights. Legal rights determine when the government acting as the agent of individuals within the society may respond with force. The circumstances that permit a government to respond with coercion are no different from those which justify the individual use of force, i.e., to defend individuals and their property from acts of aggression. When the government uses coercion in any other circumstances, those acts are not morally justifiable and the government is committing acts of aggression. Individuals have a moral right and obligation in a free society to protect themselves from acts of aggression by government, as well as by other individuals.

In this libertarian philosophy there is no basis for a dichot-

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omy between the individual's personal rights and his economic rights. When a person is denied the exclusive possession and control of the fruits of his labor, i.e., his personal property, against his will, that is a violation of his individual rights on the same plane as aggression aginst his person:

> The importance of freedom, therefore, does not depend on the elevated character of the activities it makes possible. Freedom of action, even in humble things, is as important as freedom of thought.
>
> To extol the value of intellectual liberties at the expense of the value of the liberty of doing things would be like treating the crowning part of the edifice as the whole. We have new ideas to discuss, different views to adjust, because those ideas and views arise from the efforts of individuals in ever new circumstances, who avail themselves in their concrete tasks of the new tools and forms of action they have learned. (51)

For libertarians the freedom to do material things is just as crucial to progress as freedom of expression and other personal liberties. Individuals must be free to pursue material ends for inventive and innovative activity to occur. Impediments to creative activity in the economic sphere are detrimental to human welfare in the same sense that restrictions on the freedom of ideas and expression is to intellectual advancement.

Political economists in this libertarian tradition, such as Milton Friedman, argue that economic freedom is a necessary and essential condition for political freedom. When the government has a ubiquitous role in economic activity, it is difficult to preserve political and personal freedoms. The individual who is dependent upon government for employment, welfare, or other subsidies is not likely to express criticism of governmental institutions even when freedom of expression is protected. As John Stuart Mill had argued more than a century earlier:

> If the great joint stock companies, the universities, and all the public charities, were all of them branches of the government,... if the employees of all these different enterprises were appointed and paid by the government, and looked to the government for every rise in life; not all the freedom of the press and popular constitution of the legislature would make this or any country free otherwise than in name. (52)

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For modern libertarians, the freedom of the market for goods and services, for capital, for labor is on a par with freedom in the market place of ideas. The freedom of the individual to choose an occupation, to work, to save and invest, to consume, etc. is a fundamental part of his individual liberties. The preservation of these economic rights may be just as important if not more important to the individual's welfare as his personal rights of expression, voluntary association, and participation in the political process.

The implications of this libertarian philosophy are clear. When the Supreme Court abdicates its role in protecting economic due process, placing personal liberties on a higher protected plane, it makes an arbitrary distinction which has no basis in the Constitution. The resulting expansion in governmental coercive power impinging on the economic rights of individuals is inconsistent with a philosophy of individual rights and social contract as embodied in the Constitution and in the precedent of common law. The erosion in the power of the courts in failing to protect economic due process has permitted the government to impose economic burdens, doing irreparable harm to individuals and minorities, in the public interest. This change in the rules of the game had far reaching consequences for labor law in America. (53)

For students of labor history the Wagner Act passed during the New Deal of the 1930s marks a watershed of change in the institution of collective bargainiing in America. More important, from the perspective of this study is the dramatic change in the role of the Supreme Court in the 1930s. Up to the 1930s the Supreme Court played a crucial role in defining the property rights of individuals, including the rights of individuals in collective bargaining agreements. The 1930s launched a period, which one author refers to as "judicial abdication," when the court distinguished between personal liberties and economic liberties, placing the latter on a lower level of judicial review. Since that time the court has not decided a single case involving economic liberties on constitutional grounds. The standard for judicial review in such issues is based upon statutory intent, rather than constitutional issues. In contrast, the court has imposed even stiffer standards for judicial review of personal liberties under the Constitution.

Judicial abdication has had a profound impact on the institution of collective bargaining. In effect, the rights of employers,

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groups of employees, and individual employees have come to rest entirely on the courts' interpretation of legislative intent rather than on the economic rights of the individual parties. Perhaps the best illustration of this lower standard for judicial review is the court's rediscovery of the 1st amendment rights of individual employees to voluntary association. In several recent cases the court has chosen to protect this personal right of association under the 1st amendment, but has refused to rule on the economic rights of individual employees under the 5th and 14th amendments of the Constitution. There is no better example of the dichotomy that now exists in the courts standards for review of personal liberties versus economic liberties.

Conclusion

In this study we trace the political economy of labor law from the pre-industrial era through the Industrial Revolution and the emergence of a mature economy. In the pre-industrial era, a laissez faire ideology is translated into a constitution establishing individual liberty and property rights. Public policies reflect the dominant ideology of laissez faire political economy, with limited government intervention in economic activity. The Supreme Court emerges in this period defining and interpreting the Constitution so as to protect individual liberty and private property rights. The most important change directly affecting labor law is the adoption of the criminal conspiracy doctrine from British law into American statutes and common law.

Beginning in the mid-19th century a laissez faire ideology gives way to the political economy of the Populist and Progressive eras based upon utilitarian collectivism. This is reflected in public policies calling for a more activist role for government and intervention by the government to provide public goods and services and correct the imperfections of the market place. The Supreme Court modifies the rules of the game to sanction this extension of governmental power vis-a-vis private property rights. The result is a significant increase in government control in labor markets. However the courts play an important role in setting limits to this government intervention, subjecting labor legislation to judicial review under the due process clause of the Constitution. Substantive due process proves to be an

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effective barrier to government infringement of the rights of employers and employees in labor markets. The courts also use injunctions and damage suits to protect the rights of employers, employees and unions in labor disputes. While these changes in public policy and in the legal environment reflect the influence of labor, business and other interest groups, the institution of collective bargaining remains largely unaffected. With the exception of the initial application of the antitrust laws, collective bargaining remains outside the purview of public policy.

The New Deal policies in the 1930s represent a culmination of the pragmatic approach to public policy in America. The pragmatic ideology of the New Deal is no longer viewed as a discontinuous break with the past, but rather as a continuous evolution of political economy with links to the Populist and Progressive eras. Nonetheless, the New Deal brings a watershed of change in public policies expanding government intervention throughout the economy. The National Labor Relations Act shifts public policy from neutrality toward active support of labor unions and collective bargaining. The courts negate much of the early New Deal legislation as unconstitutional but reverse their position in the late 1930s to sanction these laws, including laws which establish government controls over labor markets and collective bargaining. The court abdicates its role in reviewing legislation to protest economic liberties under the Constitution. This judicial abdication opens the field of labor law to the dictates of government policy; the only standard for judicial review is based upon legislative intent.

Government controls now circumscribe virtually every aspect of labor relations, from regulations of wages, hours, and working conditions to principles of collective bargaining between employers and labor unions. This pervasive role for government in labor markets poses a dilemma for public policy. Since the 1930s public policy has supported labor unions and collective bargaining on the grounds that this is essential for industrial peace and public welfare. But that public support has come increasingly into conflict with other public policies in labor markets designed to achieve other goals such as advances in productivity and economic growth, and stability of wages and prices.

Public policies have also come into conflict with the constitutional rights of individuals as employees, employers, and union

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members. Modern libertarians have challenged labor policies that permit the government, or labor unions acting as the statutory agents of government, to infringe upon the rights of individuals. They have demanded an economic bill of rights which places economic liberties on the same plane of importance as personal and political liberties. Included in this bill of rights is a return to voluntary choice in labor markets, including the employees' rights to voluntarily contract with employers regarding the terms and conditions of employment, and the right of employees to join or not join a union. We have not attained such a radical change in labor law, but recent changes in public policies and in court decisions seem to be moving in that direction.

FOOTNOTES

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ISLANDS OF VIOLENCE: THE CRISIS OF AMERICA'S PRISONS AND JAILS

By John T. Fennell

We tend to ignore prisons and jails until something extraordinary draws our attention to these institutions. The occasion is usually a riot on the order of an Attica or the New Mexico holocaust. Our attention is riveted momentarily and then fades. The subculture of incarceration, however, includes over 500,000 Americans. With the crime epidemic continuing unabated, this subculture is not likely to shrink or become any less costly to maintain. Indeed, since nearly every prison and jail in the nation is overcrowded, the costs will either increase due to new construction or criminals will go free, as has happened in at least six states.

There is a need to clarify our thinking about prisons and jails. What should the correctional system be expected to accomplish? The public discourse is laced with allusions to criminal rehabilitation. Indeed, it is an article of faith in many quarters that rehabilitation is the primary, if not sole, purpose of locking people up. Ramsey Clark, the former Attorney General, made a classic statement of this attitude in *Crime in America*: "Rehabilitation must be the goal of modern corrections. Every other consideration should be subordinated to it."

Unfortunately, criminal rehabilitation is a bankrupt philosophy. The advocates of rehabilitation sometimes point to Sweden as having a model penal system; however, with a recidivism rate of over 70 percent, the Swedish "model" is a failure. A former Swedish Chief Prosecutor, Holger Romander, has said, "Our philosophy of rehabilitation has been shipwrecked. Criminality will not be cured through rehabilitation."(1) America's Director of the Bureau of Prisons, Norman Carlson, admitted in testimony before a congressional committee that "we do not know how it (i.e. rehabilitation) takes place, when it takes place, if it takes place, or why it takes place."

The two most important books written on the issue of crime and justice in the '70s were Ernest van den Haag's *Punishing Criminals* and James Q. Wilson's *Thinking About Crime*. With

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regard to rehabilitation, both reach the same conclusion:

> Rehabilitative treatment has not been shown to be effective in reducing recidivism: the recidivism rates of those treated in different programs by different methods do not differ from the rates of those not treated at all, whether in the U.S. or elsewhere.(2)
>
> . . . the evidence seems quite clear: In general, different kinds of institutions do not make an appreciable difference in the prospects of rehabilitation . . . It does not seem to matter what form of treatment in the correctional system is attempted . . . . Indeed, some forms of treatment – notably a few experiments with psycho-therapy – actually produced an increase in the rate of recidivism.(3)

The conclusion is inexorable. We simply do not know how to rehabilitate a criminal.

Yet the myth of criminal rehabilitation persists. Even so astute an observer as Chief Justice Warren Burger has called for turning prisons into "factories with walls." This is simply one more variation on the old rehabilitation theme. Texas prison official Rick Hurtleys observes, "We already teach basic skills, but the inmate must cooperate – we can't compel him to learn." California has over 10,000 inmates enrolled in vocational and work programs with no appreciable impact on recidivism. I have spoken with many inmates who learned several useful trades, while spending most of their lives in institutions; once back on the streets, they soon returned to criminal activity and eventually jail or prison.

I am not arguing that prison work programs should be eliminated. Such programs are important tools for running an orderly institution. One of the reasons for the New Mexico disaster was that there were hundreds of habitually idle inmates with nothing to do. But we should not fool ourselves into believing that programs rehabilitate criminals.

While the correctional system fails to rehabilitate, it does prevent murderers, robbers, rapists, burglars and dope dealers from practicing their professions and hobbies – at least in the community as a whole, if not in the inmate subculture. The most that can be expected from jails and prisons is that they segregate criminals from the rest of us in a humane, orderly and secure fashion. The correctional system is failing, however, to accomplish even this seemingly straightforward purpose.

We should quit deluding ourselves with the cant of criminal

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rehabilitation. The guiding principle of the correctional system should be safety and security, not rehabilitation. I will discuss the problem of violence in the correctional system and some of the important policy issues and reforms affecting the control of violence.

Island of Violence

The most critical problem facing the correctional system is the prevention of violent, assaultive behavior. Prisons and jails are appalling centers of savagery. Simply because they are locked up, predators, whether individuals or in groups, do not stop preying on others.

Gangs dominate many institutions. These groups control drug trafficking, homosexual prostitution, gambling and protection rackets. California's Mexican Mafia, also known as EME, is perhaps the most powerful prison gang in America. EME, organized in the early '60s, has over 300 members. They have perpetrated dozens of murders both in and out of prison.(4)

Even veteran observers of the correctional system were stunned by the barbaric nature of the New Mexican State Prison riot that claimed 33 lives; many of the men dying only after the most ghastly torture. Wilbert Rideau and Billy Sinclair, accomplished inmate writers serving life terms at the Louisiana State Prison, have outlined the primary need for order, control and safety in the correctional system:

> The criminal ethic is a vicious set of values spawned out of an insidious drug culture and the back-alleys of urban housing projects. The 18 to 25-year-old inmates who control today's prisons grew up on the criminal ethic and they have turned prisons into islands of violence . . . The average prisoner lives in a world of fear and intimidation . . . . Correction and change are impossible in this compressed atmosphere where survival is the only priority.(5)

Despite the fantasies of the ACLU, the average inmate is much more concerned about his peers than an institution's guards and staff. A man who has spent most of his 40 years behind bars told me that "As long as you go along with the program and follow the rules, you never have to worry about the officers. All the pressure comes from other inmates. They're the ones who will try and rip you off and punk you." ("Punking" is jailhouse jargon for homosexual rape.) Tommy Mason, considered a "model inmate" by Louisiana prison officials,

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gives talks to groups of young people. Sinclair and Rideau quote Mason on prison violence: "'Damn the paper programs and unrealistic bureaucratic notions. What about protecting the inmates who can't do it themselves! How the hell you gonna tell an inmate . . . to rehabilitate himself when he had to give up his manhood just to survive?'"

Overcrowding

America's crime epidemic began in the early '60s; yet between 1960 and 1970 the number of prison inmates actually fell from 213,000 to 196,000. As the '70s wore on, however, it became apparent to even the most ardent liberal that the crime problem was of frightening proportions. Public outrage gradually led to more people being sent to prison for longer terms. Accordingly, by 1981 the prison population had exploded to 369,000. Another 150,000 or so people held in local jails brings the total number of prisoners to over 500,000 – virtually as many inmates as police officers. But the construction of new jails and prisons has not kept pace; the prison system alone is 100,000 above capacity.

A severely overcrowded institution is an invitation to increased violence, disorder and even rioting. The resources of a correctional staff are stretched to the limit and adequate supervision becomes difficult or impossible. One can feel the tension and stress rising as a prison becomes progressively more crowded: The quality of food and medical care deteriorates; shortages of clean clothes and bedding develop; sanitation systems break down; and people sleep on floors, if they can find the space.

Every properly run institution has an inmate classification system. Such a system identifies, houses and assigns work to inmates based on gang affiliation, criminal sophistication and history of violence. As officers run out of room to move inmates around, classification procedures become paralyzed. Consequently, inmate predators find easy prey in jammed cellblocks.

Three alternatives to conventional incarceration have been adopted to help relieve overcrowding. California and Massachusetts have gone for training implementating such alternatives. The first, a pre-trial release program, involves freeing newly arrested people, who meet certain criteria, simply on their promise to appear in court. A person is moved through the jail

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system more quickly, because the time-consuming process of contacting a bondsman or relatives and friends to raise bail is avoided. When properly managed, the rate at which people participating in such a program fail to appear for court is no greater than when a posting of bail is required.

Second, work furlough centers can be established. These centers allow selected sentenced prisoners to work at jobs in the community during the day, while spending the weekends and evenings in a minimum security facility which is relatively inexpensive to maintain. The inmates continue to support their families and can also be charged for the cost of their confinement.

And, finally, there are pre-release or halfway houses. Massachusetts has 20 such facilities. Approved inmates, approaching the end of their terms, are moved into community-based centers in order to increase space in maximum security prisons.

Opposition to New Construction

Although such measures can ease the problem, they will certainly not resolve the crisis of overcrowding. America simply needs to build more maximum security jails and prisons. In some parts of the country, however, new construction is opposed for several reasons.

First, politicians generally get little credit from their constituents for spearheading a campaign to build a new prison or jail. Individuals and pressure groups spanning the political spectrum often oppose public spending on such projects. At one extreme, there are inmate rights and rehabilitation zealots who do not think anybody should be locked up. Instead, they want money spent on programs designed to get at the "root causes" of crime. On the other side are those who ignore inhumane, violent conditions: "the criminal is only getting what he deserves," and "tax dollars should not be wasted on new buildings merely to ease overcrowding." And of course no one, regardless of his political persuasion, wants a jail or prison in his nighborhood.

Second, jail and prisons are very complicated structures to build. Since local pressure groups and all levels of government usually get involved, seldom do any two look alike. For example, strong disagreement can develop over the philosophy of incarceration that will guide the design of a new facility. There are two basic alternatives: the "soft" approach, which emphasizes rehabilitation, and the "hard" approach, which empha-

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sizes security.

A "soft" jail, the model favored by the National Institute of Corrections, might have carpeting, plumbing fixtures like those found in homes and inmates with keys to their own "rooms." The correctional officers are locked up with the inmates in a common dayroom, and meals are prepared together and shared. This close interaction between staff and inmates is supposed to encourage rehabilitation. However, this writer worries about the mental, not to mention physical, health of the officers. It is quite possible that an officer, particularly if young and inexperienced will have his own values distorted by such intense exposure to the criminal substitute – a kind of rehabilitation in reverse.

The "hard" approach features concrete or linoleum floors, special security plumbing, electronically operated doors and a lot of safety glass and steel. Contact between staff and inmates is minimized.

The third and most important reason for opposition to new construction is money. A new institution housing 600 inmates can take up to 5 years to complete and cost $50 million. But, to paraphrase the TV commercial, "we can pay now or we can pay later." Warren Burger, addressing the American Bar Association in 1980, warned of the "folly" of an elaborate justice system casting "the guilty into 19th century penal institutions ... It is wrong. It is expensive. It is stupid." With the crime epidemic continuing unabated, we can either pay for new penal construction, or we can pay by having the courts set criminals free to ease severe, inhumane overcrowding, as has happened in Michigan, Maryland, Virginia, Georgia, Alabama and California.

Holistic Corrections

Innovative research and experiments are being conducted in a "holistic" approach to controlling institutional violence. The holistic philosophy includes the use of diet, color and orthomolecular analysis to modify inmate behavior. At first blush, the holistic philosophy may seem like "voodoo corrections." Certainly, the medical profession is skeptical of holistic concepts, but many correctional officials have become believers. Holistic corrections is particularly popular in the West. Its principal spokesman, Alexander Schauss, is a former Washington state probation officer, who now teaches and conducts

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research at the City College of Seattle. Schauss's seminars on "Body Chemistry and Offender Behavior" are very popular with jail and prison administrators.

Painting temporary holding cells a bright, hot pink is an amazing example of a holistic concept. A short stay in a "pink room" frequently has a calming effect on a tense, uncooperative prisoner. The Santa Clara County Jail, serving California's Silicon Valley, has such a cell. Prisoners, particularly when first brought in off the street, who are belligerent and verging on violence are left in the pink room for up to 15 minutes. Jail officials report that "the calming influence of pink has reduced altercations . . . by 30 to 40 percent." Other jails, including the U.S. Naval Corrections Center in Seattle, have experienced similar results.(6)

Certain foods, food additives and vitamin deficiencies and imbalances "can trigger violent behavior or aggravate a pre-exciting tendency toward violence in people."(7) Since at least 1917 there have been sporadic and isolated studies associating criminal behavior with biochemical or metabolic factors, but only within the last decade has systematic attention been given to this area.

A holistic approach to nutrition purges processed sugar, caffeine and white flour from the inmate diet; whole grained flour, honey, fruit, nuts and vitamin supplements are added. For example, after implementing a holistic oriented diet, Seattle's Naval Correctional Center reported "a definite decrease in the number of confinees at sick call and on medication . . . and disciplinary reports are down 12 percent . . ." Over a dozen California adult and juvenile jails have had similar experiences.

There may be a link between hypoglycemia and violent or criminal behavior: "there is a great likelihood that a very large number of inmates suffer from some degree of hypoglycemia, which aggravates and perpetuates criminal behavior."(8) Many habitual criminals consume large quantities of sugar, alcohol and drugs, eat poorly, sleep irregularly and lead very stressful lives. Such a lifestyle is conductive to promoting hypoglycemia. Asaro and his associates conducted an experiment in the treatment of hypoglycemia at the Morris County, N.J., Jail in 1975. Twenty-five inmate volunteers stopped consuming caffeine and processed sugar. They were given high protein diets, vitamin supplements and dietary educational information. After eight weeks, the researchers observed an "improvement in morale, mood and self motivated behavior."

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Barbara Reed, a Washington probation officer, has conducted remarkably successful dietary experiments with her probationers. The Reed program eliminates processed sugar, flour, coffee, alcohol, prepackaged items, and, as far as possible, foods with additives, preservatives and artificial coloring. She urges the consumption of high protein meals, salads, whole grained products and lightly cooked vegetables. Reed outlines the results of one experiment:

> Thirty-one probationers were tested in a medical clinic and all 31 came up hypoglycemic. All but three of them followed our nutrition program. Of the three, two got back into trouble and the third is about to. The other 28 people did not get back into trouble.(9)

Orthomolecular analysis is another important aspect of holistic corrections. Chemist Jeffery Bland, of Puget Sound University, argues, "all behavioral dysfunctional individuals have in part related to their problems a psychosocial component and a biochemical component, and many times the psychosocial component develops in response to the biochemical component." By this he means that the presence of excessive amounts of certain toxic chemicals and metals in the body are associated with aberrant, violent and criminal behavior. For example, it is well established that high concentrations of lead in the blood will cause hyperactivity and aggressiveness. Other substances that may trigger similar reactions include aluminum, zinc, cadmium, arsenic, herbacides and mercurial pesticides.

We do not know, however, the prevalence of these toxic chemicals in the general and criminal population. Although Schauss, Bland and others are conducting experiments in detecting biochemical imbalances through hair analysis, a valid and reliable means of biochemical evaluation has yet to be developed.

Holistic corrections is an area crying out for more research and practical application. Only a handful of penal institutions have experimented with holistic concepts. Our prisons and jails need to start taking a much closer look at how environmental and biochemical factors, particularly diet, affect inmate behavior.

The Imperial Judiciary

An important dimension of the controversy swirling around

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our jails and prisons involves judicial intervention and inmate constitutional rights. The XIII Amendment to the Constitution, all but forgotten in our time, proclaims: "Neither slavery nor involuntary servitude, *except as punishment for crime* whereof the party shall have been duly convicted, shall exist within the United States . . ." (Emphasis added) Thus, in the 19th century the issue of inmate rights was quite simply resolved: They did not have any. Even in the 20th century an attitude of benign neglect persisted into the '60s, as the courts adopted a hands off attitude toward the conditions of incarceration and the operation of penal institutions. The duty of the courts was to insure that a man was not imprisoned illegally. Beyond that the administration of prisons and jails was left to corrections personnel — and there was considerably less violence and turmoil in the penal system.

The dramatic changes, upheavals and stresses that began to affect society as a whole in the early '60s also had a dramatic impact on the nation's custodial institutions. America has always been a litigious nation. Tocqueville observed 150 years ago that "Scarcely any question arises in the United States which does not become, sooner or later, a subject of judicial debate . . ." However, in our time, the Imperial Judiciary has become virtually omnipresent and actively intervenes in nearly all aspects of American life. The penal system has been no exception, with the courts becoming increasingly involved in the day-to-day affairs of jails and prisons. The XIII Amendment was ignored, but a whole panoply of inmates rights was discovered to exist within the language of the I, IV, V, VI, VIII and XIV Amendments. The courts began issuing decisions and orders on all aspects of inmate life, including housing conditions, religion, discipline, searches, mail, hair length, legal services, etc.

Judicial intervention is a two-edged sword. Corrections officials sometimes welcome law suits and court orders that force public spending for sorely needed renovations or even new jails and prisons. But when a judge — in the interest of protecting inmate rights — begins to virtually run an institution it is very counterproductive. Expanding the sphere of inmate rights limits the discretion of corrections officials and makes running a secure, orderly jail or prison more difficult.

Alexander Solzhenitsyn, in his famous Harvard Commence-

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ment Adress, observes: "The defense of individual rights has reached such extremes as to make society as a whole defenseless against certain individuals. It is time, in the West, to defend not so much human rights as human obligations." His analysis is a trenchant for the penal system as it is for so many other areas of our culture. Fortunately, the U.S. Supreme Court recognized the problem in *Bell v. Wolfish* (1979). This 5 to 4 decision, reversing the two lower courts, was a victory for advocates of judicial restraint.

The case directly involved the New York Metropolitan Correctional Institute, a "model" federal jail used primarily to hold unsentenced inmates awaiting trial. The inmate suit was based on the principle that the jail's "detainees," awaiting the outcome of their respective trials, were "innocent until proven guilty." Accordingly, they should not be subjected to the same restrictions as sentenced prisoners. Only those minimal rules consistent with guaranteeing that the accused would be present for trial were alleged to be constitutional. Based on this rationale, a number of institutional security procedures were challenged, e.g., cell searches, "skin searches" and mail restrictions. The U.S. District Court and the Court of Appeals ruled in favor of the inmates on all of the major points in question.

In the reversal, the lower courts were severly castigated for becoming "increasingly enmeshed in the minutiae of prison operations." Justice Rehnquist, author of the majority opinion, emphasized that there must be more of a balance between inmate rights and the need to run a secure and orderly facility:

> . . . maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of constitutional rights of both convicted prisoners and pretrial detainees.

The nation's judges should start listening more to the professionals who run correctional institutions:

> . . . the problems that arise in the day-to-day operation of a corrections facility are not susceptible to easy solutions. Prison officials therefore should be accorded wide-ranging deference in the adoption and executions of policies and practices . . . . Such considerations are peculiarly within the province and professional expertise of corrections officials.

Hopefully, in the wake of *Bell v. Wolfish,* the professional administrators of the nation's jails and prisons — the real

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experts – will be allowed to get on with their difficult jobs with less judicial interference.

Controlling institutional violence and creating an orderly, secure and humane environment is the most formidable task confronting the correctional system. I have discussed several of the obstacles to reducing the level of savagery that characterizes most prisons and jails. The first is a confusion over purpose generated by the discredited philosophy of criminal rehabilitation. The second is severe overcrowding – a national problem of staggering proportions. Finally, there is often too much interference by the courts in the day-to-day operation of jails and prisons. The existence of a problem, however, does not guarantee the existence of a solution. And, indeed, there may be no solution to the crisis of America's prisons and jails.

FOOTNOTES

(1) *New York Times,* September 5, 1977, p. 4.

(2) Ernest van den Haag, *Punishing Criminals* (New York: Basic Books, 1975), p. 188.

(3) James Q. Wilson, *Thinking About Crime* (New York: Vintage Books, 1977), p. 189.

(4) EME's activities extend to the streets where huge profits are reaped from a wide range of criminal activity, including the infiltration and looting of federally funded rehabilitation programs. The gang is so dangerous that the Cosa Nostra was forced to form an alliance with EME in the early '70s.

(5) Wilbert Rideau and Billy Sinclair, "Prison Riots and the Criminal Ethic," *San Jose Mercury News,* February 1, 1981, p. 5C.

(6) Caution must be observed, however. Some jails have made the mistake of painting *permanent* housing cells pink. Prolonged exposure to a pink room may have a reverse effect and cause an increase in aggressiveness. Only temporary holding cells, according to holistic adovcates, should be painted pink.

(7) *An Ounce of Prevention: Toward an Understanding of the Causes of Violence* (Sacramento, California: California Commission on Crime Control and Violence Prevention, 1981), p. 44. This landmark report is the most comprehensive compilation of research available on the causes of violence.

(8) D. Asaro, G. Goesbeck and C. Nigro, "Diet-Vitamin Program for Jail Inmates," *Journal of Orthomolecular Psychiatry,* Volume 4, No. 3, 1975, p. 221.

(9) Martin Zucker "Crime and Diet," *Let's Live Magazine,* May, 1979, p. 61.

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PANAMA CANAL: MARINE PROBLEMS AND THE SOLUTION

By Captain Miles P. DuVal, Jr., U.S. Navy, Ret.

The Central American Isthmus, with its well known transportation routes, together with the Caribbean Basin has been long recognized as forming the heart of the Western Hemispheric security and as serving as the center for the Monroe Doctrine. A focal element in that strategic region is the Panama Canal, one of the major crossroads of the world.

As foreseen by U.S. canal authorities many years ago, this vital waterway has reached the point of capacity saturation, which during traffic peaks periodically causes unacceptable delays for vessels using it, thus attracting demands for increased canal capacity.

The overall Isthmian Canal question has a history of more than four centuries and is one of substantial complexity. In addition to the diplomatic, economic and political problems involved in the crucial struggles over site and type there are other important factors in the canal equation. Among them are the effect of the modernized Tehuantepec Railway for transporting container cargoes between the oceans, the influence of the recently completed pipeline in western Panama for the transfer of Alaska oil to the Atlantic, and the consequences of that "hardy perennial" ideal for a canal of so-called "sea-level" design coupled with the environmental dangers that marine biologists state would be caused by a salt water channel between the oceans.

The operations of the new oil pipe line and the Tehuantepec Railway have served to reduce the pressure on the Panama Canal temporarily. For the first four months of Fiscal Year 1983 tolls paying transits totaled 4131 as compared to 4554 for the same period in 1982.

Japanese interests are now supporting a feasibility study in regard to the "sea-level" proposal, and will later participate in the current U.S.-Panamanian studies of this scheme now in progress.

Much has been learned from the prolonged operation of the existing Panama Canal in both peace and war. Its major marine operational problems have been extensively studied and the

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first comprehensive plan for the future Panama Canal, derived from actual marine experience, developed. Let us look at these, and also, more briefly, at the general history of Isthmian transit.

The story of the Panama Canal is not new. It traces back in a vast literature to the age of discovery. On his fourth voyage of exploration, Christopher Columbus sailed southward along the east coast of the Central American Isthmus, passed the mouths of the San Juan River in Nicaragua and the Chagres River in Panama, and spent the Christmas of 1502 in Limon Bay at what is today the Atlantic entrance to the Panama Canal. The cities of Cristobal and Colon are named in his honor. In 1513, Vasco Nuñez de Balboa, from a peak in Darien, discovered the Pacific Ocean, then called the South Sea, thus completing the historical setting for what was to follow. That discovery is memorialized in the name of the Port of Balboa at the Pacific entrance of the Canal.

Within a relatively short time after the voyage of Columbus the Spanish colonizers, recognizing the strategic location of the Isthmus, explored it for transit routes all the way from Tehuantepec in Mexico to the Atrato River in Columbia. The first plan for the Panama Canal was prepared in 1529 by the Spanish engineer Alvaro Saavedra.

Because of the lower continental divides at Nicaragua and Panama and penetration of the jungles of both by navigable rivers, the early Spanish developed important trade routes over these two natural avenues that for many years were the leading competitors for trans-Isthmian transit. It was not until the 19th century, however, that serious explorations for canal sites were conducted, most notably by the U.S. Army and Navy. The first specific step toward undertaking the Panama Canal was the construction by U.S. interests of the Panama Railroad – the first transcontinental railway in the Americas that was opened for traffic in 1855. The second major step was the great French canal effort at Panama, 1880-89, under the leadership of Ferdinand de Lesseps, the hero of the Suez Canal. Though that attempt ended in tragic failure, it did prepare the way for the United States, under the dynamic leadership of President Theodore Roosevelt, to acquire control of the U.S. Canal Zone and launch the construction of the Panama Canal, which was opened to traffic in 1914, just in time for vital use in World War I.

During the era of exploration by the United States, there

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evolved a definite pattern of investigation emphasizing two key issues: first, the question of site; and second, the matter of type. Their purposes were to secure the best site for the best type of canal, and this pattern has been repeated each time the canal issue has come up for major consideration.

The problem of site for the first canal across the Isthmus was decided in 1902 only after a searing struggle in the U.S. Congress, 1899-1902, known as the "Battle of the Routes" between the proponents of the Nicaragua and Panama locations, which ended with the choice of the Panama site. The matter of type was decided in 1906 only after another scorching debate in the Congress, 1905-1906, known as the "Battle of the Levels" between supporters of a canal to be formed largely by fair-sized lakes and proponents of one of "sea-level" design, which resulted in victory for the high-level-lake and lock type. History has completely established the wisdom of those two great decisions: The Panama site for a lake-lock canal.

In early 1941, it was my good fortune to have been ordered for duty at a critical period in history as Captain of the Port of Balboa in the Canal Zone, with responsibility for marine operations in the Pacific half of the Panama Canal. This sector included the southern part of the summit level Gatun Lake; the hazardous Gaillard Cut, eight miles long; two sets of Pacific locks; the small intermediate level Miraflores Lake, separating those locks; and the Pacific sea-level section of the canal to deep water in the Pacific, including the Port of Balboa.

Soon after arrival on the Isthmus, a series of serious accidents in the Pacific sector focused my attention on the crucial problems of marine operations. The ensuing efforts included the examination of records of hundreds of investigations of marine accidents since 1914, the plotting of their locations throughout the entire length of the Canal, and the study of their proximate causes.

The results were revealing. The more serious accidents occurred in the narrow rocky channels of Gaillard Cut. Few occurred in Gatun Lake, where the channels are wide, or in the sea-level sections of the Canal. Accidents in the lock chambers were of relatively minor character and proportional in numbers to the number of steps in the locks. The Pedro Miguel Locks, located squarely in the southern end of Gaillard Cut, had the highest number of accidents to vessels entering and leaving

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those locks, marking it the most dangerous of all the locks.

In May 1942, the 1939 project for the construction of a third set of larger locks then underway was suspended because of more urgent war needs after the expenditure of more than $76,000,000. The major parts completed, which will be useful in future major modernization, included two huge lock site excavations at Gatun and Miraflores, a rail-vehicular bridge across the Miraflores Locks, and a bed for relocating the Panama Railroad near Gatun.

Although the cessation of that tremendous work, which left the Canal essentially as it was in 1914, appeared regrettable at the time, that action made it possible to make a deep study of the marine problems of ship transit and for evolving a plan that would provide the best canal for navigation.

Those efforts included many visits to two mountain tops near the Pedro Miguel Locks to observe vessels intransit, frequent trips on vessels during transits, discussions with experienced engineers and pilots, obtaining data on night fogs in Gaillard Cut, learning about lockage surges in Gaillard Cut, and an examination of the terrain of the Pacific side of the continental divide.

As shown by those inquiries and confirmed by later studies, the Canal had, and still has, the following major marine operational problems:

1) The dangerous bottleneck at the Pedro Miguel Locks, at times causing southbound vessels to slow in a restricted channel, thereby losing steerage way and often forcing them to maneuver to avoid grounding.

2) The double handling of vessels at the Pacific Locks, with resulting inconvenience, increased numbers of accidents, and loss of time.

3) The adverse effect of night fogs in the Gaillard Cut on canal capacity and operation.

4) The surges of 3' maximum amplitude of the Gaillard Cut water level caused by the operation of the locks at Pedro Miguel.

5) The limited operating range of the summit water level of Gatun Lake from a high of 87' to a low of 82'.

6) The navigation hazards in the rocky Gaillard Cut restricted channels, originally of 300' minimum bottom width but since 1970 of 500'.

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7) The limited dimensions of the present locks, 110' by 1000'.

In contrast with the acute marine problems caused by the Pedro Miguel Locks in the southern end of Gaillard Cut, there were no such problems at the northen end, where they were no locks but only the widening channels of Gatun Lake affording virtually unrestricted navigation. What was needed at the southern end of Gaillard Cut was a summit level lake between the narrow cut and the Pacific Locks to serve as an expansion chamber for traffic.

In line with my request, canal engineers checked the impounding perimeter around the Miraflores Lake basin and found that a smaller Pacific terminal lake at the same level as Gatun Lake, then 87' maximum, could be created with relatively small dike construction. Those associated with the studies at the time were thrilled by that discovery, for they recognized its significance.

Before deciding what to do, it was necessary to determine whether the maximum water level of Gatun Lake should be lowered or raised. That study conclusively established that lowering the summit lake water level by extending the length of Gaillard Cut would impair navigation and that raising the level would improve navigation.

What are the solutions for the previously listed seven major marine problems?

1) For that of the dangerous bottleneck at the Pedro Miguel Locks, it is their complete physical removal.

2) For the problem of the double handling of vessels at the separated Pacific Locks, the proper remedy is their consolidation south of Miraflores at Agudulce in continuous steps similar to the lock arrangement at Gatun.

3) For the adverse effect of night fogs in Gaillard Cut, the corrective is an elevated Miraflores Lake, which is fog free, for use as a traffic reservoir during fog periods.

4) For the problem of lockage surges, the creation of the elevated Pacific terminal lake will reduce them to negligible magnitudes, probably less than an inch.

5) For increasing the present 5' operating range of the Gatun Lake summit water level, the solution is to raise its maximum level of 87' to its optimum level of 92', thus doubling the reserve water capacity for lockages and improving navigation.

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6) For reducing the navigational hazards of Gaillard Cut, the corrective is its continued enlargement as shown to be needed by marine experience.

7) For the handling of larger vessels, the answer is construction of one set of larger locks.

The above remedial measures combined, known as the Terminal Lake-Third Locks Plan, also as the Balanced Lake Plan, were approved in principle by two experienced Governors of the Panama Canal for the major modification of the original Third Locks Project and received strong support from the most knowledgeable Panama Canal engineers; and it is unanimously supported by Panama Canal pilots, who are the best informed professional group on the problems of the marine operational needs of the canal.

Most of the individual remedial measures so far taken are not basic solutions but mere symptomatic treatments that do not solve the major marine problems, but only provide needed temporary relief pending major modernization.

What would the Terminal Lake-Third Locks Plan accomplish? It would eradicate the dangerous bottleneck at Pedro Miguel, create a summit level lake between Galliard Cut and the Pacific Locks thereby aiding vessels in the summit level when leaving or approaching them, provide uninterrupted summit level navigation from the Atlantic Locks to the Pacific Locks, reduce accidents, eliminate lockage surges, mitigate the effect of fog on operations, decrease transit time about one hour and simplify canal management, thereby providing the best canal for operations practicable of achievement and at least cost. Moreover, this plan has been tested for more than half a century of satisfactory operations at Gatun, and could be accomplished with full assurance of success. Such construction is authorized under both the 1903 and the 1977 Canal Treaties.

Most significantly, the Terminal Lake-Third Locks solution would enable the maximum utilization of all work so far accomplished on the Panama Canal during its construction and since 1914, which is considerable. In addition, the more than $76,000,000 expended on the Third Locks Project and some $95,000,000, spent on the enlargement of Gaillard Cut from 300' to 500' minimum width, make a total of over $171,000,000 already expended toward major modernization. In 1983 currency, all of the original cost estimates would be far greater.

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The plan is so obvious and so simple that many have asked why it was not proposed earlier in the history of the Canal: it was. In 1908, Colonel William L. Siber, an important Panama Canal builder, made determined efforts to change the approved plans so as to consolidate the Pacific Locks in an arrangement similar to the Atlantic Locks. He did not succeed, because construction had started and such a change would have delayed the opening of the canal, which was a controlling factor at that time.

In 1906, an able canal engineer, William Gerig, made the same proposal to Chief Engineer John F. Stevens, who let him take full credit for the idea. Also, earlier in 1906, prior to Gerig, Chief Engineer Stevens made the same recommendation to the Congress. Unfortunately, his later investigations for foundations proved unsatisfactory and he was constrained by economic and political hazards that could not be ignored to proceed according to the approved plans for separating the Pacific Locks that he had sought to consolidate as he had done for the Atlantic Locks.

Many have asked also why it was not considered by the French at the Paris Congress of 1879 called by Ferdinand de Lesseps to decide the questions of site and type for an Isthmian Canal. It was in that Congress of some 134 distinguished leaders from various countries, that one engineer, when he saw the way the gathering was being directed toward adopting the predetermined objective for a canal at Panama of "sea-level" design based on the success of the Suez Canal, rose in strong protest and stated that he would not have his name associated with what he knew would be a great disaster. Then, showing the insight of true genius based on study of key problems involved, he explained what he described as a "practical plan" for constructing the Panama Canal: "Build a dam at Gatun and another at Miraflores, or as close to the seas as the configuration of the land permits. Let the waters rise to form two lakes about 80 feet high, join the lakes thus formed with a channel cut through the continental divide, and connect the lakes with the oceans by locks. This is not only the best plan for engineering, but also the best for navigation."

In large measure, this 1879 plan was eventually adopted in 1906, mainly through the efforts of Chief Engineer Stevens, Secretary of War Taft, and President Roosevelt. But its originator was the notable French engineer Adolphe Godin de

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Lépinay, who, by so speaking, won lasting merit as the precursor of the Panama Canal.

The Terminal Lake-Third Locks solution is not presented as a new idea for it is not. What is new is the fact that it is the first comprehensive plan for future Panama Canal development based upon actual marine experience.

In addition to the current United States-Panamanian feasibility study and Japanese interest in it previously mentioned, the idea of an interoceanic canal in Columbia near the Panamanian border, linking the Atrato and Truando Rivers, has been recently resurrected. These activities together, coupled with Latin American complaints about increased transit tolls, reveal an expanding public interest in the overall Canal situation.

With the size of vessels requiring transit of the Panama Canal increasing, and delays caused by peak traffic needs continuing, the time is rapidly appoaching when a major increase of capacity and operational improvements will be essential.

The true criteria for decision is ease and safety of navigation and, as shown earlier, this test leaves no doubt as to the best solution — the strongly supported Terminal Lake-Third Locks Plan for the existing Panama Canal.

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THE POLITICAL POLICIES OF NIGERIA

By N. Nnadozie Nwosu

> Ignorance is preferable to error; and he is less remote from the truth who believes nothing, than he who believes what is wrong.
>
> Thomas Jefferson

The borders of Nigeria were formed during the period of British colonial rule, and essentially served only as delineating lines marking the areas ruled by the British from the neighboring areas ruled by the French. As such, Nigeria comprises many different races and people, and the First Republic of Nigeria died a premature death partly because the Nigerian leaders had failed to inculcate in the minds of Nigerians, despite the enormous political apparatus which they controlled, a feeling of oneness; rather, they tended to manipulate tribal and ethnic sentiments for their own political purposes. The First Republic failed also because of the greed and avarice of the political leaders during the great era of "carpet crossers" in which Nigerians witnessed a situation whereby a person elected on a platform of a particular political party was literally "bought" by another party. Having been "bought," he then crossed over to the purchasing party, swelling its ranks in Parliament and making a mockery of the ballot box. During this era, political alliances of convenience were formed principally for the benefit of the leaders. This system or lack of system eventually led to bloodshed and the breakdown of law and order. The final acts were coups, counter coups, and civil war.

Nigeria emerged from the civil war united and strong, its leaders more mature than they were before the war. The history of the First Republic with its political alliances of convenience could be a useful guide that might lead to the avoidance of the past bitter political experiences, only if their lesson is followed.

This can be done if Nigerians learn to stress and emphasize things that unite them, rather than those that divide them. Nigerians and their leaders must come to grips with the fact that no individual is indispensible. In order to ensure respect for the political party in power, there must not be any co-mingling of the funds of the government and the funds of the

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party, as was evident during the "hay days" of the defunct Action Group.(1)

Let us briefly examine the role of political parties in political development and modernization. According to David E. Apter, "the political party is such a critical force for modernization in all contemporary societies that the particular pattern of modernization adopted by each is quite often determined by its parties."(2)

Sigmund Neumann attempted to define a political party. According to Neumann:

> A definition of "party" might as well begin with its simple word derivation. To become a "party" to something always means identification with one group and differentiation from another. Every party in its very essence signifies partnership in a particular organization and separation from others by a specific program. Such an initial description, to be sure, indicates that the very definition of party presupposes a democratic climate and hence makes it a misnomer in every dictatorship. A one-party system (le parti unique) is a contradiction in itself.

"A primary function of parties," said Apter, "is to organize public opinion and test attitudes and to transmit these to government officials and leaders so that the ruled and rulers, public and government, are in reasonably close accord. The entire representative principle of government rests on this relationship.(3) It is the nonapplication of this basic representative principle of government by political parties in the developing countries that not only muzzles public opinion, but also results in tyranny. The employment of political thugs to harrass opponents and the use of the apparatus of government to silence honest and healthy dissent create bitterness, tension, and insecurity that tend to undermine the authority of the government. The end result is usually more repression of the citizenry as the government feels more and more insecure, leading to a breakdown of law and order.

An examination of the literature on political parties convinces one that the type of political parties operating in Nigeria is what David E. Apter calls "the party of solidarity, in which the party organization determines the critical relationships of society,"(4) as opposed to the "party of representation." Explaining the reasons for the existence of parties of solidarity, Apter observed that "one cause of such a pattern of develop-

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ment is the existence in the society of conflicting organizations that mirror primordial lines of cleavage." (5)

The attitude of some of the leaders of the developing nations as to their "divine right to rule until death do them part with their subjects" needs a genuine re-examination by such leaders. The fact that there are capable people at any given time in a country who can take up the mantle of leadership cannot be honestly denied. It is unfortunate that some of the leaders of these emerging nations would prefer to be removed by force of arms rather than abdicate power constitutionally and democratically and play a constructive role of elder statesmen; some believe that by abolishing the multiparty system and adopting the single party system they would perpetuate their rule. What follows as these leaders entrench themselves in power forever is corruption, instability, and inefficiency.

Ruth Schachter Morgenthau in her *Single-Party Systems in West Africa* noted that although the party system had evolved in West Africa prior to independence,(6) the events of the 1960s in the developing nations of Africa have shown that the leaders of those nations have taken steps to destroy the opposition parties and install a one-party state by intimidation, repression, and the annihilation of opponents.(7)

Let us briefly examine some of the past and present party alignments and realignments in Nigeria with a view to attempting an analysis of the mistakes that led to the demise of the First Nigerian Republic.

The politics of the First Nigerian Republic were dominated by the National Council of Nigerian Citizens (NCNC); the Northern Peoples Congress (NPC); the Action Group (AG); and the Northern Elements Progressive Union (NEPU). Other mushroom parties included the Dynamic Party (DP); the Niger Delta Congress (NDC); the United Middle Belt Congress (UMBC); the United Peoples Party (UPP); and the Democratic Party of Nigerian Citizens (DPNC). The National Council of Nigerian Citizens (NCNC), formerly known as the National Council of Nigeria and the Cameroons (NCNC), was inaugurated on August 26, 1944, under the leadership of the late Herbert Macaulay, as President. The mantle of leadership of the party was passed on to another prominent statesman, Dr. Nnamdi Azikiwe, when Herbert Macaulay died. Dr. Azikiwe immediately made known the direction the party would take in the Nigerian political arena on his assumption of the leadership of

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the party when he said: "The NCNC was born with the primary task of exerting mass pressure in order to accelerate the political development of Nigeria."(7)

Inspired by this goal, Dr. Nnamdi Azikiwe prematurely announced, in 1948, that the NCNC "had fulfulled the dreams of its founders by unifying the various elements of Nigeria ..." (8) The events leading to the demise of the First Republic of Nigeria proved that the NCNC and the other major parties had failed to unify the diverse elements of Nigeria during the First Republic.

At the time Nigeria achieved her independence, in 1960, the NCNC, together with its ally, the Northern Elements Progressive Union (NEPU), constituted the Federal Nigerian Government in partnership with the Northern Peoples Congress (NPC). The NCNC was also in power in both the Eastern and Midwestern Regions of Nigeria, in addition to being the official opposition in the Western Regional Government. The NCNC voice and influence in Northern Nigeria were also apparent through its ally, the Northern Elements Progressive Union (NEPU). In addition to its influence and representation in the then four regions of Nigeria, the NCNC was also in control of the Lagos Capital Territory.

Another major party during the time of the First Nigerian Republic was the Northern People's Congress (NPC). This was originally established as a cultural organization, known in Hausa as "Jam'iyyar Mutanen Arewa," but from the beginning it served as a political rallying ground for the educated Northern Nigerians. The NPC had become a political force of enormous magnitude in Northern Nigeria by 1951 because of the unquestioned loyalty it garnered from the feudal emirs and the other traditional rulers whose orders were unquestioned by the common men (the 'talakawas"). One of the results of the 1966 army coup was a reduction of the powers of the Northern emirs.

The three prominent Northern Nigerians who played a significant part in the formation of what later became the Northern People's Congress were Dr. A.R.B. Dikko, Malam D.A. Rafit, and Malam Abubakar Imam of the Hausa language newspaper *Gaskiya Ta Fi Kobo* (Truth is worth more than a penny). Rafit founded and organized the *Jam'iyyar Mutanen Arewa A Yau* (the Association of Northern People of Today) on October 3, 1948 in Kaduna. Dr. Dikko and Malam A. Imam,

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on the other hand, founded in Zaria on October 12, 1948 the *Jam'iyyar Jama'ar Arewa* (the Northern Nigerian Congress). Since Malam D.A. Rafit, who founded the *Jam'iyyar Mutanen Arewa A Yau* in Kaduna earlier in the month, was also in attendance at the October 12 founding of the *Jam'iyyar Jama'ar Arewa*, the three men and their supporters agreed to amalgamate the two organizations and rename them the *Jam'iyyar Mutanen Arewa* (the Northern Nigerian Congress, later renamed the Northern Peoples' Congress).(9) One of the early founding members of the Northern People's Congress (NPC) was Malam Aminu Kano, who later broke ranks with the NPC to found and organize the Northern Elements Progressive Union (NEPU) that was later aligned with the National Council of Nigeria and the Cameroons (NCNC). Although the Northern Peoples' Congress was originally founded by men who were considered to be "moderate radicals," its leadership later reverted to the chiefs (the sarakuna) rather than to the commoners (the talakawa), since status and role in Northern Nigeria during the First Nigerian Republic was strictly ascriptive in the administrative and ruling elite.(10)

Regionalism was acclaimed by some of the leaders of the Nigerian political parties of the First Republic, in the guise of speaking for "the people." One of the founders of the Northern Peoples' Congress was quoted as saying that ... "the common people of the North put more confidence in the white man than in either their black Southern brothers, or the educated Northerners ..."(11) Tribalism and regionalism were not confined to the NPC alone during the First Republic. Similar charges of regionalism and tribalism were made against both the NCNC and the Action Group.

The *Egbe Omo Oduduwa* (Society of the Descendants of Oduduwa), an offshoot of the Action Group, was founded by Chief Obafemi Awolowo in 1945 during his student days in London. In addition to being the founder and General Secretary of the *Egbe Omo Oduduwa*, Chief Awolowo was also the founder and President of the Action Group. The Action Group, in 1951, proclaimed to:

> .... maintain the closest possible association with the *Egbe Omo Oduduwa*, the Edo Union and other ethnic organizations in the Western Region. As far as possible, it will use the existing branches of these organizations to foster its own interests and it will in turn use its organiza-

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tional machinery to enlarge and consolidate the spheres of their influence.(12)

In the first Nigerian electon in 1951, after the formation of the Action Group, the party campaigned for regionalism in Western Nigeria and won, while the NCNC campaigned against regionalism and lost. Some people have since, fairly or unfairly, regarded Chief Obafemi Awolowo, the Action Group leader, as a tribalist, in part because of his assertion that:

> Nigeria is not a nation. It is a geographical expression. There are no "Nigerians" in the sense that there are "English," "Welsh," or "French." The word "Nigerian" is merely a distinctive appelation to distinguish those who live within the boundaries of Nigeria and those who do not.(13)

Perhaps, Chief Awolowo was not alone in his negative reflections about Nigeria as a nation. Sir Abubaka T. Balewas similarly observed, with regionalism in mind, that:

> Since 1914, the British have been trying to make Nigeria into one country, but the people themselves are historically different in their backgrounds, in their religious beliefs and customs, and do not show themselves any sign of willingness to unite ... Nigerian unity is only a British intention for the country.(14)

The leader of what later became the Northern Elements Progressive Union (NEPU), Alhaji Aminu Kano, was a foundation member of *Jam'iyyar Mutanen Arewa* which later became the Northern Peoples' Congress (NPC). Out of apparent dissatisfaction with the fact that the NPC was being too closely aligned with the allegedly oppressive Emirs and other natural rulers, he broke ranks and inauguerated the Northern Elements Progressive Union (NEPU) on August 8, 1950. The declared aims of the NEPU leaders were a struggle between the *talakawa* (the commoners) and the Emirs. It was partly reaction to the perceived threat of the NEPU and "Southern pan-Nigerian nationalism"(15) that prompted the Northern Peoples' Congress (NPC) to cast aside its guise as a cultural organization and become a political party dedicated to the maintenance of the status quo, vis-a-vis the role of the Emirs and the Native Authority functionaries.(16)

Let us now briefly examine some of the political party alignments and realignments and how they contributed first to the fragile stability and later to the disastrous and bloody

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collapse of the First Republic.

As the Nigerian leaders shuttled back and forth in the game of political alignments and realignments, it became obvious that some of the politicians of the First Republic did not really enter into political alliances with the national interest at heart, but mainly because they wanted to remain in power. The political party leaders of the First Republic simply looked down upon the people from their positions of power. For example, according to Chief Awolowo:

> ... the generality of the people are not interested in self-government or in government generally. What they are interested in is their food, shelter, clothing, to get married, bear children, and drink plenty of palm wine, and if they have money, to drink gin as well. (17)

Many of these political coalitions were made on the spur of the moment, only to be dissolved as other issues arose. After the 1954 Federal Elections, in which the National Council of Nigeria and the Cameroons (NCNC) won both the Western and Eastern Regions, and the Northern People's Congress (NPC) won the Northern Region, the two parties agreed to cooperate to form the Federal Government of Nigeria as coalition partners. After the 1959 Federal Election, both parties again agreed to form the pre-independent Federal Government of Nigeria. Both parties shunned overtures by the Action Group (AG), led by Chief Awolowo, to form a Federal Coalition Government with either, because of the alleged tribalistic tendencies and the incitement of Nigerian ethnic groups against one another by the Action Group and its leadership. The NCNC-NPC coalition ensured an orderly transfer of power from the British colonial administration to an independent Nigeria. "I personally believe," said Dr. Nnamdi Azikiwe, "that a coalition between the NPC and the NCNC would bring in an element of stability in the country."(18)

The Action Group (AG) crisis of 1962 split the party into the Awolowo and Akintola factions, the door became open for the A.G. to cause discord within the NCNC-NPC coalition government as the NPC and the NCNC separately attempted to woo each of the A.G. factions, even though both the NCNC and the NPC deprecated the divisive role of the A.G. leadership in the Nigerian body politic. Chief Samuel L. Akintola's ambition led to his expulsion from the A.G. after he refused to resign as Premier of Western Nigeria. When Chief Akintola's faction in

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the Action Group (AG) emerged victorious over the Awolowo faction, Akintola formed a new political party, the United People's Party (UPP) and, later, the Nigerian National Democratic Party (NNDP), which quickly went into alliance with the National Council of Nigerian Citizens (NCNC). This was an alliance of convenience and Akintola later used tribalistic anti-Ibo and pro-Yoruba rhetoric to destroy the NCNC in Western Nigeria, while at the same time playing crony to the NPC, an NCNC partner in the Federal Coalition Government.(19) The purpose was to again cause discord and bring about the disintegration of the NPC-NCNC coalition.

The approach of the 1964 Federal Election saw yet another alliance of convenience. Having succeeded in driving a wedge between the two Federal Government Coalition partners (the NPC-NCNC Coalition), Chief Akintola entered into an alliance with the NPC, which became known as the Nigerian National Alliance (NNA). Chief Awolowo, another player in the Action Group melodrama, then entered into an alliance with the NCNC, which became known as the United Progressive Grand Alliance (UPGA). The NCNC should have known that Chief Awolowo, a former leader of the Action Group, would do to them what Chief Akintola, another former leader of the Action Group, did to them, that is, discard the NCNC as soon as it was convenient to do so. The politicians fought each to retain control of the federal government of Nigeria after the general election, and they gave no thought to the stability of the nation or to the fact that a rigged and unfair election would incur the wrath of the people. Warning of the consequences of an unfair election, Dr. Nnamdi Azikiwe said, "... should the politicians fail to heed this warning, then I will venture the prediction that the experience of the Democratic Republic of the Congo will be a child's play, if it ever comes to our turn to play such a tragic role."(20)

Dr. Nnamdi Azikiwe's warning was ignored. The alliances of convenience formed purposely to contest the 1964 General Election did everything in their power to defeat the will of the people. Both the so-called Nigerian National Alliance (NNA) and the so-called United Progressive Grand Alliance UPGA) were reported to have used hooligans and thugs to physically abuse opposition leaders and their supporters with a view to preventing them from putting their views to the electorates. People appointed as "elections returning officers" were intimi-

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dated by the various regional governments controlled by parties belonging to the two alliances of convenience. The result was that these "returning officers" accepted only election nomination papers from candidates sponsored by the regional governments controlled by alliance members' parties of both the Nigerian National Alliance (NNA) and the United Progressive Grand Alliance (UPGA). Opposition party members often could not file their election nominating papers since the "elections returning officers" could not be found the minute the nominating papers of the regional government-backed candidates had been accepted. The idea was to have the candidates whose papers were accepted declared "elected unopposed" as soon as the time limitation for filing election papers expired. The entire election was a calculated fraud on the electorate! In an attempt to appear to be the champion of free and fair elections, the United Progressive Grand Alliance (UPGA) decided to boycott the General Election. This gave the leaders of the Nigerian National Alliance a one-sided victory in 1964.(21)

Nigerians, having witnessed one of the most fraudulent General Elections, supposedly "legitimatized" by the formation of a broadly-based federal government tooled in party alliances, and it came as no surprise when during the 1965 West Nigeria election, there were verifiable accounts of ballot papers being found on Akintola's supporters, and of women concealing ballot papers in their clothes and dumping them into the ballot boxes of Akintola's candidates. Newspapers and other accounts showed that:

> ... [electoral] returning officers refused to declare the result of the pool after the count, enabling false returns to be broadcast from the regional capital, Ibadan; ... In several consitituencies, the A.G. [Action Group] candidate secured a certificate from the returning officer that stated that he had won, but the victory of the NNDP [Nigerian National Democratic Party] candidate was announced from Ibadan.(22)

Lamenting about this mockery of the democratic process, the *Nigerian Opinion* said that although

> The present crisis hurts the West more immediately, it is a Nigerian crisis. It is not possible to bring into contempt the electoral system of one region and not call into question the system in every region. It is not possible to damage economic growth in the West and not damage

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> economic growth in the Federation. It is not possible for Sir Ahmadu Bello to support Chief Akintola against Alhaji Adegbenro and not draw in the federal and Eastern governments. We think that it is time the Prime Minister took some initiative.(23)

The confusion, chaos, and the breakdown of law and order which followed Chief Samuel L. Akintola's calculated rigging of the Western Nigeria parliamentary elections led to the military coup d'etat in early 1966. Nigerians witnessed the most disgraceful actions whereby the trustees of Governments made themselves the beneficiaries. The result was that:

> [Nigerian] rulers used power that they held constitutionally to do unconstitutional things. In the process, they destroyed themselves. Nigeria had censuses that were no censuses, elections that were no elections, and finally, governments that were no governments.(24)

By contrast, the 1979 General Elections, when Nigeria reverted to civilian rule after thirteen years of military rule may be regarded as a model for future elections. The fact is that the 1979 General Elections(25) were supervised by the Nigerian Armed Forces, and that the political party leaders and their supporters dared not rig the elections in any form for fear of swift military justice. Addressing the Nigerian nation on Thursday, December 28, 1978, Brigadier Shehu Yar'Adua, Chief of Staff, Supreme Headquarters said, inter alia:

> We are satisfied that all possible measures to ensure smooth elections next year are being taken. In addition, if necessary, the Federal Military Government is fully equipped to deal with any reported actual or possible plans or acts to disrupt the coming elections. We are also open to constructive suggestions in having free and fair elections.(26)

Nigerians are again witnessing the approach of another "crucial" election in 1983. To prevent any one ethnic group from electing its own political party to rule the whole of Nigeria, simply by weight of tribal or ethnic proponderance, the Nigerian constitution requires that no political party may exist unless its governing body is comprised of men from widely different ethnic groups. Thus, Chapter VI, Party II, Section 203(1)(a), (b), (2)(a), (b) of the Nigerian Constitution reads as follows:

> The Constitution and rules of a political party shall provide –

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(a) for the periodic election, on a democratic basis, of the principal officers and members of the executive party; and

(b) ensure that the members of the executive committee or other governing body of the political party reflect the federal character of Nigeria.

For the purposes of this Section –

(a) the election of the officers or members of the executive committee of a political party shall be deemed to be periodical only if it is made at regular intervals not exceeding four years; and,

(b) the members of the executive committee or other governing body of the political party shall be deemed to reflect the federal character of Nigeria only if the members therof belong to different States not being less in number than two-thirds of all the States comprising the Federation. (27)

The Nigerian Constitution very specifically and unambiguously provides that "the members of the executive committee or other governing body of the political party shall be deemed to reflect the federal character of Nigeria only if the members thereof belong to different States not being less in number than two-thirds of all the States comprising the Federation." The current Nigerian political parties (NPN, NPP, UPN, PRP, and GNPP) meet the above and other criteria. Yet certain elements of the Nigerian population still consciously or unconsciously refer to the NPN as a Hausa party, the NPP as the Ibo party, and the UPN as a Yoruba party, and during the 1979 presidential elections, the NPN did not field an Ibo man or a Yoruba man as its presidential candidate, nor did the NPP field a Hausa man or a Yoruba man as its presidential candidate. The UPN did not field a Hausa man or an Ibo man as its presidential candidate. The only solution to this problem would be to require political parties to rotate their presidential candidates every eight years, so that if they offer a Northern Nigerian candidate this time, they must offer a Southern Nigerian candidate next time. Under the present system, without some such requirement, there can be no guarantee that Nigeria will survive as a federation of diverse people, or that one ethnic group will not seize power and dominate all other ethnic groups. Indeed, if ethnic and tribal loyalties remain strong, as at present, then the mere publication of census figures relative to the diverse ethnic groups would be enough to determine which leader and

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which political party will win or lose the election. People still vote according to what they perceive to be tribal loyalties, and the Nigerian party system has not succeeded in bringing about a unified Nigeria.

FOOTNOTES

(1) See the Report of the Coker Commission of Inquiry into the Affairs of Certain Statutory Corporations in Western Nigeria, 4 Volumes (Lagos: Federal Ministry of Information, 1962). It was alleged during this inquiry that four leaders of the Action Group formed a National Investment and Properties Company purporting to develop certain properties of the National Bank. It then got about a $15 million loan from the Marketing Board and, out of this loan, $5.6 million was siphoned into the Action Group Funds.

(2) David E. Apter, *The Politics of Modernization* (Chicago: The University of Chicago Press, 1965), p. 179.

(3) Ibid., p. 181.

(4) Ibid., p. 197.

(5) Ibid.

(6) Ruth Schachter Morgenthau, "Single Party Systems in West Africa," *American Political Science Review* (June, 1961), reprinted in H. Eckstein and David E. Apter (eds), *Comparative Politics: A Reader* (New York: Free Press of Glencoe, Inc., 1963), pp. 693-705. See also Morgenthau, *Political Parties in French Speaking Africa* (Oxford: Clarendon Press, 1964).

(7) Nnamdi Azikiew, *Zik: A Selection of Speeches,* op. cit., p. 312.

(8) James S. Coleman, *Nigeria: Background to Nationalism* (Los Angeles: University of California Press, 1958), p. 295.

(9) Sklar, op. cit., p. 91.

(10) See, for example, C.S. Whitaker, Jr., "A Dysrhythmic Process of Political Change," *World Politics,* Vol. 19, No. 2 (January, 1967), p. 210; Sklar, op. cit., pp. 210-366.

(11) James S. Coleman, op. cit., p. 360.

(12) K.W.J. Post, *The Nigerian Federal Election of 1959* (Oxford University Press, 1963), p. 33.

(13) Obafemi, Awolowo, *Path to Nigerian Freedom* (London: Faber and Faber Ltd., 1947), p. 47.

(14) James S. Coleman, p. cit., p. 320.

(15) Coleman, op. cit., p. 359.

(16) K.W.J. Post, *The Nigerian Federal Election of 1959* (London: Oxford University Press, 1963), p. 50.

(17) *Nigeria: Federal Parliamentary Debates. House of Representatives Debates,* March 31, 1953 (Lagos: Government Printer, 1953); see, also, Obafemi Awolowo, *Path to Nigerian Freedom* (London: Faber and Faber Ltd., 1947), p. 31 in which he said, "... as for the masses, they are ignorant and will not be bothered by politics ..."

(18) See, for example, *Daily Times,* March 9, 1964; Kalu Ezere, *Constitutional Development in Nigeria* (Cambridge: University Press, 1964), pp. 262-263; J.P. MacKintosh, *Nigerian Government and Politics* (Evanston, Illinois: Northwestern University Press, 1966), pp. 419-427.

(19) J.P. MacKintosh, "Politics in Nigeria: The Action Group Crisis of 1962," *Political Studies,* Vol. XI, No. 2, 1963, pp. 142-145.

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(20) See *Daily Times,* December 11, 1964; J.P. MacKintosh, *Nigerian Government and Politics,* op. cit.,; Frederick A.O. Schwartz, Jr., *Nigeria, The Tribes, The Nation or The Race: The Politic of Independence,* (Cambridge, Mass.: Massachusetts Institute of Technology Press, 1965).

(21) See, MacKintosh, *Nigerian Government and Politics,* op. cit., pp. 581-592.

(22) N.J. Miners, *The Nigerian Army 1956-1966* (London: Methnen & Co., Ltd. 1971), p. 151.

(23) See *Nigerian Opinion* (Ibadan: University Press, 1965-1966).

(24) A.H.M. Kirk-Greene, *Crisis and Conflict in Nigeria,* Vol. 1 (London: Osford University Press, 1971), p. 28.

(25) See, for example, Walter Ibekwe Ofonagoro, *The Story of the Nigerian General Elections, 1979* (Lagos: Federal Ministry of Information, 1979).

(26) Nigeria, *The Constitution of the Federal Republic of Nigeria* (Apapa: Times Press, Ltd.), p. xiii.

(27) *The Constitution of the Federal Republic of Nigeria,* op. cit., p. 75.

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INTELLIGENCE AND NATIONAL ACHIEVEMENT

Editor
Raymond B. Cattell

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TAX INCREASES AND THE PRICE LEVEL

By Vito Tanzi

Economists who have received their training in public finance or in macroeconomics in recent decades have learned that inflation can be fought through tax increases or cuts in public expenditure. Keynesian analysis demonstrates how these changes set in motion deflationary forces that put downward pressure on prices. Although Keynesian economics concludes that deflationary fiscal policy can be pursued either through tax increases or through expenditure cuts, the prevalent view among public finance experts has been that tax changes are more efficient. This conclusion is based on the view that the level of public expenditure should be set in relation to (longer-run) social objectives and should, thus, not be changed to accommodate short-run or cyclical considerations.

Tax increases, according to the public finance experts, reduce the disposable income of individuals and, as consumption is assumed to depend on disposable income, reduce consumption. This reduction, through the effect of the multiplier, brings about a magnified fall in national income, which, in turn, puts downward pressures on prices and wages by its effect on the rate of unemployment and the utilization of capital. These deflationary effects of tax increases are the ones that receive most attention. In fact they are the only effects recognized in macroeconomic textbooks. However, it has always been recognized in public finance textbooks that tax changes may, in addition to their inevitable, deflationary effects, also have an impact on prices and on factor supplies. Further, under the stimulation brought about by a renewed interest in supply-side economics and by the high level of taxation, these supply-side effects, especially those related to direct taxes, have in recent years been analyzed more closely than before and have been shown to be more pervasive and significant than previously believed.

The conclusion of this article is that, when both the demand-side (deflationary) effects and the supply-side (inflationary) effects of tax increases are considered, the case of using tax increases to fight inflation appears somewhat weaker than previously believed. This does not mean that this instrument of

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economic policy should be abandoned. It does mean, however, that we should search actively for more efficient instruments. In particular, we should pay more attention to expenditure cuts as these may have stronger deflationary effects (through large multipliers) and have weaker effects than taxes on output.

Indirect Tax Effects

Tax increases are likely to bring about higher prices in a number of ways, some of which are more obvious than others. Under the normal assumption of forward shifting, increases in indirect taxes (including those on imports) are likely to have an immediate effect on the cost of living. Whether that initial effect is followed at a later stage by further increases or by declines in the prices of nontaxed products or of productive factors depends on a variety of factors. Let us consider an increase in excise taxes first. As pointed out by Blinder and Solow (1974) and by Brechling and Classen Utgoff (1979), such an increase will reduce the consumers' real income by raising the price of the taxed products, unless their supply functions are completely inelastic. Furthermore, unless the supply functions are completely inelastic, the output of the taxed products will decline. Therefore, even if the money supply has not changed, in the short run the same amount of money will be used to purchase fewer goods, with the implication that the price index will rise.

Consider next an increase in a general sales tax – say, a value-added tax on a retail tax. Again, the initial effect is clearly inflationary, as the tax increase is likely to be shifted forward in higher prices. What happens next depends in part on monetary policy and in part on whether indexation of wages and pensions brings about additional increases. Let us consider one at a time. The initial increase in prices will reduce the real value of the money balances held by individuals. Their reaction is likely to be parallel to that contemplated by the monetary approach to the balance of payments (BOP) when there is a devaluation. Consumers will increase their nominal money balances to try to bring them back to their desired real value, so that sales will fall and unemployment will rise. If the money supply fails to accommodate the fall in output, if wages are flexible downward in the short run, and if wages and pensions are not indexed with a frequent adjustment clause, then wages

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will fall and the new equilibrium price level (gross of the tax increase) will be unchanged. But clearly, these are rather stringent conditions.

Direct Tax Effects

Increases in direct taxes are also likely to bring about higher prices in a number of ways. One way is through direct forward shifting. Whether in the short run the corporate income tax, for instance, is or is not shifted forward in higher prices has been a highly controversial question for decades. In general, the degree of shifting may depend on the structure of the market, so that the question can be settled only by empirical studies. The latest of these studies (by J. Melvin in 1979), using an input-output model, concluded that higher corporate income taxes result in significant price increases and that this price effect varies significantly among industries, depending on their capital intensity.

The issue of whether increases in the employer's portion of the social security tax result in inflation has also attracted considerable attention. Some countries have gone so far as to reduce these taxes and replace the lost revenues with other taxes in order to make enterprises more competitive, thus implicitly assuming that the tax is a cost of production that is shifted forward in higher prices. Economic theory has generally suggested that labor will eventually bear the brunt of higher payroll taxes but does not indicate whether it will pay through price increases or through wage restraint. As consumers include not only wage earners but also those living on capital incomes, pensioners, welfare recipients, and so on, it is clear that the burden on labor from higher prices will be different from that due to lower wages. Forward shifting implies that groups other than the wage earners are bearing part of the burden.

Let us consider next income taxes levied on wage earners, as well as the employee's contributions to social security. The standard assumption in the literature on public finance has been that the burden of these taxes falls fully on the wage earners. However, this assumption may be unrealistic under current circumstances. Wage earners may be protected: if inflation causes them to get increases that are totally or partly based on cost of living adjustments, if the tax system is not indexed for inflation, if the wage negotiations are sufficiently centralized,

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and if the earners feel that they will not benefit from the higher tax burden, it is reasonable to assume that they will focus their demands on net-of-tax, rather than on nominal, wage increases. This implies that they will demand nominal wage increases that exceed the increase in the cost of living index, setting in motion a wage-tax spiral.

Considerable evidence from wage negotiations in several industrial countries indicates that wage earners have, in fact, at times bargained on the basis of net-of-tax wages; further, some governments have attempted to influence the outcome of wage negotiations by offering to lower income taxes in exchange for lower wage demands. Some impact of taxes on wages has also been found in econometric studies for Canada, the Netherlands, the United Kingdom, and the United States (Tanzi, 1980a).

Finally, there are the effects of taxes on capital incomes. No theory has yet been developed about the possible forward shifting of tax increases on such types of income as capital gains, rents, professional incomes, and profits of unincorporated businesses. On the taxation of interest incomes under inflationary circumstances, some work has shown that, if interest rates are fully taxable, the Fisherian theory that the nominal interest rate will equal some real rate plus the expected inflation rate cannot be right. In such a case, the nominal interest rate will have to increase by more than the expected inflation rate (Tanzi, 1976). As interest payments are important costs of production, an increase in their rates prompted by higher taxes would be inflationary and might, in addition, have price effects that extend beyond their direct cost effects. For example, they might be taken as the harbinger of future price changes and therefore might affect inflationary expectations. Or they might attract capital inflows, thus expanding the money supply. However, as yet, empirical tests based on historical data have failed to demonstrate conclusively that taxing interest rates is inflationary (Tanzi, 1980b).

Effects on Labor, Saving

The indirect effects of tax increases include their influence on the supply and allocation of factors of production. If, as a result of taxation, the supplies of factors of production are reduced or if they are allocated less efficiently, production costs will increase and will be passed on in higher prices. Although

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the evidence is not as clear-cut as desirable, it supports the conclusion that an increase in taxes may reduce the supply of labor and, possibly, even that of saving, and cause prices to rise. Furthermore, if the tax increase comes in the form of high marginal rates, the negative effects may have more substantial incentive effects.

There has been a great deal of interest in recent years in the response of the labor supply as income tax rates increased. Economists have never developed an unambiguous answer as to whether high income taxes lead to either higher or lower work effort. A tax increase often affects both the average and the marginal tax rate. An increase in the average rate is supposed to induce a greater work effort as labor works more to offset its loss in income due to the tax; by contrast, the argument runs, an increase in the marginal rate will induce workers to choose more as leisure becomes cheaper. On the assumption that a larger labor supply will bring about a higher output and that more output will lower prices, the price effect coming from this channel cannot be determined. However, if tax increases affect marginal rates more than average rates, it is argued, the net effect on the change could be a decline in the labor supply or in the work effort, implying a rise in prices because of the fall in output.

The ambiguity of the results has often been used to justify the conclusion that the effects of high tax rates on the labor supply can be ignored. If high marginal tax rates induce some people to work longer hours and others to work fewer, these two effects could approximately cancel each other out. Why then be concerned? This conclusion is, however, likely to be too sanguine; studies have at times shown that while lower-income individuals have generally been induced to work harder by tax increases, high-income individuals have been induced to work less. Several econometric studies, too, have found that, while the elasticity of prime-age male workers with respect to tax changes is low, the elasticities for married woman, younger workers, and older workers (about one half of the labor force in the United States) have been found to be quite substantial (OECD, Rosen, Fullerton). Until recently, the large forecasting models had ignored these potential differential effects. Recently these models have also found significant negative tax effects (Eckstein).

Economic theory identifies the same dual effects of taxation

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on saving as it does on the supply of labor – with the same result, that the outcome cannot be predicted. If a tax increase reduces the rate of return on saving, two results are possible. Individuals may consume more and save less, as consumption becomes cheaper than saving, and thus reduce the growth rate of potential output. However, if they aim to accumulate a given level of assets by the time of retirement, a reduction in the rate of return to their savings might stimulate them to save more, in which case potential output will grow faster.

In view of the empirical importance of a clear answer to this question, it is somewhat surprising that greater efforts have not gone into attempts to measure the net effect of changes in the rate of return to savings on the volume of saving. Perhaps there are two explanations for this neglect. In Keynesian economics, savings is a leakage from the income stream and the interest rate is no longer one of its direct determinants. The second is that, until recently, the real rate of return to savings net of taxes had generally been relatively stable and positive in the United States and other industrial countries. However, in the 1970s, with the advent of inflation and without adjustments in the tax systems for the inflation-induced distortions of tax bases, the real net-of-tax rate of return to financial savings often became negative for most savers. Whether as a direct result of inflation or of this dramatic reduction in net-of-tax real rate of return, the rate of savings of U.S. households also fell to very low levels.

This fall has renewed interest in the relationship between the rate of return and the volume of saving, but research as yet provides no unambiguous results for the industrial countries. In developing countries, however, financial reforms aimed at increasing the rate of return to saving have often found substantial responses from savers, in part because interest rates are often negative before the reform. As with respect to the labor supply, it can be concluded that the empirical evidence is ambiguous: tax increases that reduce the rate of return to saving would, at best, have no effect on the supply of savings; at worst, they would have a significant negative effect. To the author's knowledge, no serious evidence exists to indicate that tax increases that reduce the rate of return stimulate savings.

Allocative Effects

The previous discussion followed the traditional emphasis

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on the effect of taxes on the size of the supply of labor and of saving. But neglecting the allocational effects of taxes in this way may cause us to miss the main point. That taxes bring about reallocations and often misallocations of resources is well known. The allocation of labor is generally recognized to be responsive to taxation, as labor shifts from highly to less taxed working arrangements. There is also strong evidence that high tax rates have brought about a flourishing underground economy where incomes are not reported at all to the tax authorities (Tanzi, 1980c). Further, executives have at times refused promotions when these would have generated increases in after-tax incomes deemed too low to compensate them for the extra effort. And high taxes may also determine whether some individuals remain productive members of society or become welfare recipients. The strength of these effects depends on the level of the marginal tax rates and on the length of time they have been applied. If tax increases are considered permanent and are associated with high marginal rates, they may, even in the short run, bring about misallocations that are likely to reduce output and increase prices.

The pervasive effects of high marginal taxes on the allocation of savings may be even more serious than those on labor. Labor is constrained by such factors as personal relationships, relocation costs, seniority rights, and pension arrangements; none of these constraints exist for savings, which can be reallocated far more quickly and impersonally than labor. Even if it may not be clear whether high taxes reduce the rate of saving or not, it is clear that they affect its allocation if they are associated with high marginal tax rates on nominal incomes that may have been distorted by inflation and that they almost surely bring about distortions in the economy and, through these, price increases. Often savings are withdrawn from their socially most efficient uses and are, rather invested in activities or assets (such as houses, expensive cars, or jewelry) that may be far less productive but where the returns are essentially untaxed.

From the point of view of price stabilization, the worst possible scenario would be one in which increases in tax rates resulted in small increases, or even in falls, in tax revenue. This discussion has indicated that increases in the rates of various taxes may 1) reduce the supply of labor, 2) reduce the rate of saving, 3) distort the allocation of labor and saving, 4) increase the rate of evasion through the stimulation of under-

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ground economic activities or through direct underreporting of income, and so on. If, in addition, the increase in the tax rates leads the government to expect higher revenues, and it thus increases public expenditures, the net effect could be a larger fiscal deficit.

The likelihood of the above scenario is a matter of heated — and currently relevant — controversy. In general terms, there seems to be general agreement that an increase in the rates can be expected to increase revenue when the level of taxation and the tax rates are relatively low; however, a further increase in the rates could bring about lower tax revenues when the level of taxation and the marginal tax rates are high, although such a reduction could be delayed.

This discussion indicates that, under realistic, present-day circumstances, tax increases may themselves generate additional inflationary pressures which could, in part or totally, neutralize the deflationary effects of tax increases. Therefore, it must be concluded that this instrument for pursuing the objective of price stabilization has lost some of its sharp cutting edge. The implication of this conclusion is not that tax increases should never be used to fight inflation, but, rather, that we should be aware of the limitations of this instrument and recognize that other instruments could often be more efficient than taxes.

Apart from monetary policy (that is, the control of the monetary aggregates), two fiscal instruments that deserve attention are "cuts in public expenditure" and "tax-based incomes policy." A few remarks on these may not be out of place. In general, cuts in public expenditure, dollar for dollar, are likely to result in far greater deflationary effects than tax increases as 1) the multiplier for public expenditure is higher than for taxes and 2) in only a few cases would expenditure cuts result in direct price increases. Therefore, a reduction in the fiscal deficit resulting from expenditure cuts may have a greater deflationary impact than an equal reduction in the fiscal deficit resulting from tax increases. Furthermore, as inflation is no longer a purely cyclical phenomenon, and as it is often the result of high public expenditure, this policy acquires greater legitimacy than in the past.

In recent years, some economists have suggested that inflation should be fought with "tax-based incomes policies." The basic idea is that greater-than-average increases in profits, wages, or value-added would be taxed at higher rates. This "penalty

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tax" would supposedly discourage companies from charging higher prices or granting higher wage increases. This approach is untried and is still too new to be assessed. Many experts remain sceptical about the effectiveness of these "tax-based incomes policies." Others question their administrative practicality. However, they deserve to be studied and, perhaps, even tested. They should not be rejected until they have been proven ineffective or impractical.

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BOOK REVIEW

HELENE CARRERE D'ENCAUSSE
Confiscated Power: How Soviet Russia Really Works
Harper & Row, New York, NewYork, 1982

"In the end, what comes out of an analysis of the Soviet system is its anachronism and its contradictions," writes the author in *Confiscated Power: How Soviet Russia Really Works.* "The Soviet system has remained identical to itself for sixty years. Power remains in the hands of a coherent ruling group, supported by bureaucratic apparatuses; it still has control over all national resources and is thereby the veritable owner of the state. From the top to the bottom of the pyramid of power, privileges are distributed according to the position held. The basis of power in this system is very specific. It is in fact not tied to the possession of capital but derived from the simple fact that one is located within the sphere of power."

After presenting the historical background of the system's reactions and adaptations to the differing leadership styles and goals of Lenin, Stalin, Khrushchev and Brezhnev, d'Encausse examines the effects of power in Soviet society. She begins with a discussion of the centers of power and follows the path of this power into the everyday life of Soviet citizens. Power flows from the Party to the bureaucracies. Through *nomenklatura* (the right to approve appointments), the Party insures that those rising into managerial positions will hold the correct attitudes. "The way in which political culture is brought to bear on society, far from changing the Soviet system of values, has only reinforced its essential characteristics," writes d'Encausse. "No authoritarian political system in this century has invested more than the Soviet system in this 'manufacture of souls.'"

In fact, people in the Soviet Union are socialized into the political culture from earliest childhood. In addition to their schooling, in which they are first exposed to the collective attitude of mind, membership in youth organizations is virtually mandatory. After graduation, socialization into the political culture continues: counting personnel in all the educational

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networks, there are 8 million people permanently charged with supervising and instructing Soviet society, teaching 20 million students enrolled in Party schools, 7 million studying under the aegis of the Komosol and 35 million who receive economic training.

Soviet citizens are also frequently bombarded by intense visual propaganda during periodic mobilizations for celebrations. Even at weddings, flowers are laid at Lenin's tomb or the tomb of the unknown soldier in order to link the event to Soviet history. Additional socialization also occurs in the army, and through permanent participation of the citizens in volunteer services which have sprung up to compensate for the government's inability (due to large military expenditures) to respond to social needs.

"But can we consider collective behavior totally representative of attitudes of mind?" asks d'Encausse. "To what extent does collective behavior express real adhesion to proclaimed values?" To a lesser extent than would seem likely, she concludes. Due to the increase in higher education, and access to foreign news, the values of the Soviet people have begun to change.

"Out of a dependent society made up of subjects, people are slowly emerging who aspire to civic competance and who are trying to find the means of reaching that goal. Whether they like it or not, for the first time the Soviet authorities are confronted by forces they have not called forth and that they do not control," writes d'Encausse. *Inakomysliaschii,* translated as dissidence, literally means "thinking differently." At the moment, there are three areas in which different thought has developed: the intelligentsia, the churches and nationalities, and among the workers.

Some members of the intelligentsia have left the Writers' Union, contributing to self-published literature, magazines, and tape recordings on unauthorized subjects such as God, death and sex. On the religious and nationalistic front, d'Encausse sees a trend in the weakening of anti-religious and a-religious attitudes. "There are aspects of the religious awakening that the Soviet system cannot accept," she writes. "When society places Marxism and religion on the same plane and moves from one to the other, this is unacceptable because it means dispossessing Soviet political culture of its absolute value." Nationalistic feeling in non-Russian sections of the Soviet Union constitutes

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a similar challenge to the system; and the rebellion of the workers range from the committed militants of Polish Solidarity to the establishment within the U.S.S.R. of two independent labor unions.

"How can this better-educated society still be made to accept a system which is incapable of listening to its demands and resolving its problems? The answer is unequivocally no."

"Is the future of the U.S.S.R., in the end, not contained in the framework of East-West relations defined as 'competition of decadence?'" d'Encausse asks in her conclusion. "Who will be the first, the U.S.S.R. or the West, to be defeated by its own decline?"

H.M. CHADWICK
The Origins of the English
The Cliveden Press, Suite 520, 1629 K St., N.W., Washington, D.C.

We have to be grateful for those publishers who have chosen to devote resources to the reprinting of classic, but rare, works. Without their enterprise, our library shelves would never contain many of the more valuable and timeless books of the past.

The Origins of the English is one such work. Compiled by the renowned anthropologist, H.M. Chadwick, this text remains possibly the most comprehensive and authoritative investigation into the indigeneous and continental origins of the English nation – which properly includes many of the inhabitants of Ireland and Wales, as well as of the southern and lowland Scottish regions.

Beginning with an analysis of the pre-Roman Celtic population of *Britannia,* the study then identifies the successive waves of Angles, Saxons, Jutes and Norsemen who invaded and settled post-Roman Britain. The continental roots of each of these diverse but closely related peoples is examined, and in the process of tracing these roots considerable attention is also given to the indigeneous peoples of Germany and the low countries.

This is a subject which needs to be understood by all who would seek to comprehend contemporary British politics, and in particular the reaction of the English people against recent non-European immigration into the United Kingdom.

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SOCIAL WELFARE OR SOCIAL CONTROL? Some Historical Reflections on *Regulating the Poor*

Edited by Walter I. Trattner. The University of Tennessee Press, Knoxville, Tennessee.

In recent years the literature on social welfare has become dominated by the thesis that political and economic elites use the nation's public and private welfare institutions and organizations not to help the needy but to direct and control their behavior. According to this argument, relief is given to the poor not out of concern for their plight but, instead, to prevent the disruption of society and preserve the capitalist system. One of the clearest, most forceefully presented and influential of the works stressing social welfare as a means of social control is Frances F. Piven and Richard A. Cloward's *Regulating the Poor,* published originally in 1971. According to Piven and Cloward, public welfare programs are not designed to be philanthropic and benevolent but to maintain social and political tranquility and to force the poor into menial, low-income labor.

Social Welfare or Social Control? seeks to refute Piven and Cloward's *Regulating the Poor.* This is done with some effectiveness. Unfortunately, however, the various contributors tend to overlook the fact that while social welfare measures have often been introduced for purely humanitarian, non-socialist reasons, by legislators who had no intention of "regulating the poor," it is quite impossible to build a bureaucratic welfare system which will be free from the inbuilt tendency of its administrators to effectively intervene and direct the lives of those who receive benefits.

APPROACHES TO INDUSTRIAL POLICY WITHIN THE EC AND ITS IMPACT ON EUROPEAN INTEGRATION

By Fritz Franzmeyer. Gower Publishing Co., Brookfield, Vermont.

This book focuses on the activities of public authorities which either directly or indirectly affect the productivity, structure and international competitiveness of industry in individual countries. Its author is clearly committed to the planning and European social, economic and political integration.

To provide background, the author has diagnosed the structural situation in each individual country. The emphasis has been place on trenchant and typical differences. The social and

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economic forces which render European integration questionable are outlined, and in his conclusion the author seeks to propose bridges between diverse national structural policies which will promote integration, and which will abrogate national rights to new supra-national bureaucratic institutions.

THE INHERITANCE OF PERSONALITY AND ABILITY: Research Methods and Findings

By Raymond B. Cattell. Academic Press, New York, New York.

This volume presents the most up-to-date research methods and findings on the inheritance of human abilities and personality, both normal and abnormal. The work is based on a 10-year study of personality variations, and represents a unique approach that links genetics with learning theory.

The beginning chapters deal with older established methods such as the pedigree, physical-linkage, and twin methods, and the relevance of animal-manipulative research. Chapter 4 thoroughly treats the newer MAVA method from biometric genetics. The studies cover genetic and environmental interactions, with mathematical models and equations always provided, and, in specific cases, with diverse path coefficient models.

The author goes on to describe new methods and conceptual propositions regarding the use of path learning analysis and the use of comparative MAVA to relate learning increments of a trait to measured environmental features. The findings demonstrate the mutual usefulness of behavior genetics and learning theory. They include modes of expression and heritability, and new theories concerning the generation of unitary trait structures.

The last three chapters present extensive new research findings on common personality and ability traits. First, the results of maximum-likelihood, least-squares, and OSES methods are compared with older and twin findings. Second, the impact of the findings on psychologists' theories of origin and development of some 30 major traits (including fluid and crystallized intelligence) is discussed in depth. Psychologists are at last beginning to recognize that behavior genetics research provides an avenue as important for personality learning theory as it is for genetics.

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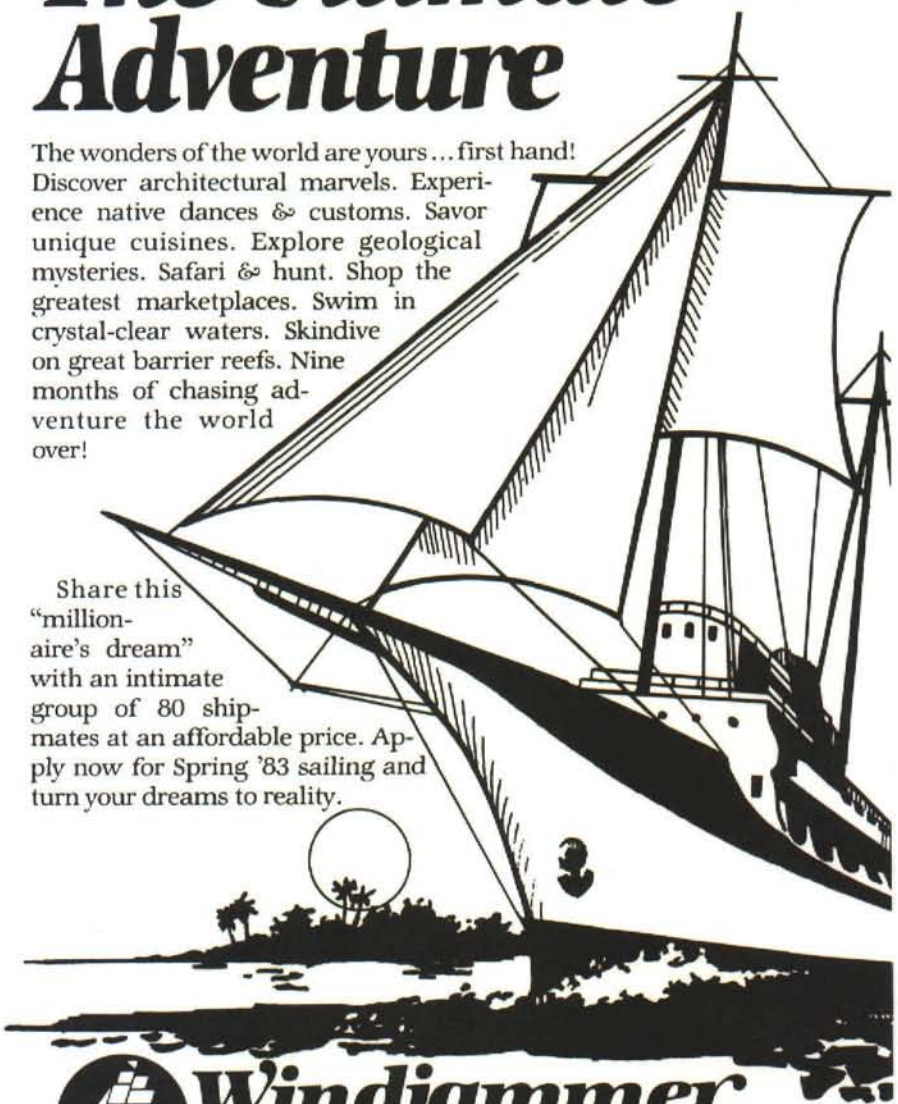

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